

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Fundamental Long Term
Care, Inc.

CASE NO: 8:11-bk-22258-MGW

Debtor.

Chapter 7

Estate of Juanita Amelia Jackson, et al.,
plaintiffs,

V.

Adv. Pro. No. 8:13-ap-00893-MGW

General Electric Capital
Corporation, et al.,

Defendants.

DEPOSITION OF: STEVE OSCHER

DATE TAKEN: June 10, 2014

TIME: 8:30 a.m. - 1:32 p.m.

TAKEN BY: GREGORY MARTIN MCCOSKEY, ESQUIRE

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REPORTED BY: LINDSEY ASHWORTH, Notary Public,
State of Florida

EXHIBIT B

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24 Counsel for the Quinteros.

25 ALSO PRESENT: Patrick Gannon, CPA, Representing Hogan
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(Appeared telephonically.)

Dan Wise, from Ventas.
(Appeared telephonically.)

Beth Ann Scharrer, Trustee.
(Appeared telephonically.)

I N D E X

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E X H I B I T S

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(A letter on the Wilkes & McHugh letterhead addressed to
Steve Oscher dated March 28, 2014.)Exhibit No. 2..... 28
(Report issued by Steve Oscher in this case.)Exhibit No. 3..... 67
(E-mail followed by several pages typed with a heading
"Assignment for the Benefit of Creditors.")Composite Exhibit No. 4..... 85
(Invoices that have been provided to the Wilkes & McHugh
firm.)

Exhibit No. 5..... 112

Fundamental.)

Exhibit No. 6..... 114
(E-mail from Mary Anne Lubertine to Ken Tabler dated
October 1, 2012.)

* * * * *
S T I P U L A T I O N S

It is hereby stipulated and agreed by and between
counsel present for the respective parties, and THE
WITNESS, that the reading and signing of the deposition
are hereby reserved.

P R O C E E D I N G S

THEREUPON,

STEVE OSCHER,

the deponent herein, being first duly sworn upon oath,
was examined and testified as follows:

MR. MCCOSKEY: Why don't we take appearances
on the phone first.

MS. HENSEL: I'm Marjorie Hensel on behalf of the
Quinteros.

MR. TRAUB: This is Seth Traub on behalf the
Chapter 7 Trustee and Trans Health Management, Inc.

MR. GANNON: Again, Patrick Gannon, CPA,
representing Hogan Lovells on behalf of GECC.

MR. MCCOSKEY: Anyone else on the phone?

(No verbal response.)

MR. MCCOSKEY: Greg McCoskey on behalf of
Fundamental Administrative Services, LLC, and THI
Baltimore, Inc.

MR. SOLOTOROVSKY: Alec Solotorovsky on behalf of
the GTCR defendants, THI Holdings, LLC, and Edgar
Jannotta.

MS. LICKO: Carol Licko, L-i-c-k-o, from Hogan
Lovells, here on behalf of General Electric Capital
Corp.

MR. VARNER: Joe Varner for Rubin Schron.

1 MR. CARROLL: Hunter Carroll -- there's two Rs
2 and two Ls in Carroll -- on behalf of the Ventas
3 Entities.

4 MR. BERMAN: Steve Berman on behalf of Beth Ann
5 Scharrer, the Chapter 7 Trustee, and Trans Health
6 Management, Inc.

7 MR. RUIZ-CARUS: Isaac Ruiz-Carus on behalf of
8 the probate estates.

9 DIRECT EXAMINATION

10 BY MR. MCCOSKEY:

11 Q Mr. Oscher, good morning. I believe you've given
12 depositions before in the past; is that correct?

13 A Yes, sir.

14 Q I will forgo most of my preliminary instructions,
15 then, other than just to let you know -- or ask you, if I
16 ask you a question and you don't understand it, will you
17 tell me?

18 A Yes.

19 Q If you answer one of my questions, I'm going to
20 assume that you understood the question. Is that fair?

21 A Yes.

22 Q If you need a break or if there's any problem
23 during the course of the deposition, will you let me know?

24 A Yes.

25 Q At times during the deposition I may ask you

1 to estimate. As an accountant, do you understand the
2 difference between an estimation and a guess?

3 A I don't know.

4 Q Okay. If I ask you a question that involves
5 estimation, I'm asking you to use your experience and your
6 best judgment to arrive at an approximate answer. I'm not
7 asking you to make an uninformed guess. Is that fair?

8 A That's fair.

9 Q Okay. Did you know you were designated as a
10 testifying expert in this case?

11 A Yes.

12 Q Are you billing for your time today?

13 A Yes.

14 Q Did you bring an invoice with you?

15 A No.

16 Q If you present an invoice to your counsel and
17 they present it to me and it gets paid within 15 days, will
18 that be acceptable to you?

19 A Of course.

20 Q Tell me what you know about this case generally.
21 What type of case is it?

22 A It's a case that involves a business entity that
23 is in bankruptcy, and claims being made with regards to the
24 bankrupt entity, and the allegations that at a point in
25 time what was transferred to the bankrupt entity were

1 liabilities that they were not in a position to pay, and as
2 a result of that the litigation involves the transfer of
3 certain assets to the different corporation.

4 Q And who do you understand to be the transferees
5 of assets of the corporation as you've just described it?

6 A The transferees were an entity THI, THMI, and
7 another entity Trans Health -- Healthcare Holdings.

8 Q Those were the recipient transferees of assets?

9 A At different times, the answer is yes. There's
10 also Trans Health -- Healthcare Baltimore, if I'm not
11 mistaken.

12 Q You may be referring to my client, THI Of
13 Baltimore, Inc.?

14 A Yes.

15 Q If during the course of the deposition I refer to
16 THI of Baltimore, Inc., as THIB. Will you understand what
17 I'm referring to?

18 A I believe so, yes.

19 Q Okay. There are a lot of acronyms in this case,
20 so if you are ever unsure, please say so. But we are
21 relying on witnesses' and counsels' proper use of acronyms.

22 A Understood.

23 Q So your understanding at -- in a general sense is
24 that this case is about liabilities that were transferred
25 to the debtor? Do I have that right?

1 A The overview is that -- that there was an issue
2 with regards to liabilities transferred, yes.

3 Q And you've identified the transferees for me.
4 Who are the transferors, as you understand it?

5 A The -- the names I gave I transposed it, it
6 appears from the question. The people who transferred, I
7 believe, were the names I just gave you. The recipients
8 were the individuals -- or was the debtor in this case,
9 Fundamental. And then there was --

10 Q Okay. I'm sorry to interrupt you. Let's start
11 over, okay?

12 A Sure.

13 Q My initial question was, who were the transferees
14 of what you described in your prior answers. You gave me a
15 list of names, and I think we are going to start over now.
16 So tell me who you understand the transferees to be in this
17 case.

18 A The transferees were the debtor in this case,
19 Fundamental. The other was the -- the client THIB
20 Management, and another entity FAS, ultimately.

21 Q Okay. And tell me who you understand the
22 transferors to be.

23 A It would have been the entities that I previously
24 identified.

25 Q Okay.

1 A THI, THIH.

2 Q You identified THMI prior. Is that still a
3 transferor, in your mind?

4 A Yes, sir.

5 Q And you identified THIB. Is that a transferor,
6 in your mind?

7 A Yes, sir.

8 Q Okay. Are there any others that you believe are
9 either transferees or transferors in the case as you
10 understand it?

11 MS. HENSEL: Form.

12 A If there are, I'm not recalling as I'm sitting
13 here with you now.

14 Q Are you aware of any other claims that are at
15 issue in this litigation other than fraudulent transfer?

16 A The -- there's an alter ego claim. There's a
17 successor in interest claim.

18 Q Do you distinguish between those two claims,
19 successor liability and alter ego, or do you consider them
20 the same?

21 A I think the terms have been used, but it's my
22 understanding from a legal perspective they are different,
23 so there is a difference between the two.

24 Q Okay. Well, let's take successor liability first
25 then. Who do you understand -- describe for me who you

1 understand to be the successor entities for that claim.

2 A Those would be the --

3 MS. LICKO: Objection to form.

4 A -- THIB Management and FAS.

5 BY MR. MCCOSKEY.

6 Q And who is the predecessor company in that
7 successor liability claim?

8 A That would have been, if I'm not mistaken, the
9 THIH and THIB.

10 Q And for the alter ego claim, as you understand
11 it, which company or companies are alleged to be the alter
12 ego of another?

13 MS. HENSEL: Form.

14 A I don't know. I didn't focus on that issue.

15 Q Okay. When were you first contacted to serve as
16 an expert in this case?

17 A Right around the first of the year. 2014.

18 Q Can you be more specific by month?

19 A It was either late December 2013, but I believe
20 it was early January 2014.

21 Q Who contacted you?

22 A Initially, I believe it was Steve Berman, but it
23 could have been Harley Riedel.

24 Q And do you recall what they first told you about
25 the case in asking you to potentially serve as an expert?

1 A They indicated -- Mr. Riedel indicated that he
2 was working in a bankruptcy matter on behalf of a creditor,
3 the Wilkes McHugh law firm. He cleared conflicts, he
4 discussed a little bit about the background of the case,
5 and indicated that he would be recommending our employment
6 to the Wilkes McHugh law firm.

7 Subsequently, we had another discussion where he
8 indicated that we were going to be retained and that
9 he would send over some information.

10 Q Do you recall speaking with Mr. Riedel on more
11 than those two occasions that you've just reflected, and,
12 of course, regarding this case?

13 A I think there may have been a couple of
14 additional conversations over the next month or two, yes.

15 Q Do you remember specifically speaking with Mr.
16 Berman at any point about this case?

17 A Yes.

18 Q On how many occasions?

19 A I believe there was one. There could have been
20 two, but there was definitely one.

21 Q And where in the process was that? Was that
22 before you were formally retained?

23 A Yes.

24 Q Okay. For that conversation with Mr. Berman do
25 you recall anyone else being part of that conversation?

1 A No, sir.

2 Q And tell me as best as you recall what Mr. Berman
3 told you about the case.

4 A Mr. Berman indicated that he was counsel for the
5 trustee and that -- he gave me background on the case at
6 the time, indicated that another CPA, Mr. Kapila, had been
7 engaged, and that it might be expected that Mr. Kapila and
8 myself might be in touch with each other to discuss aspects
9 of the case.

10 Q Prior to your engagement, do you recall what Mr.
11 Riedel -- what documents Mr. Riedel sent to you?

12 A The document I received was a complaint that had
13 been filed.

14 Q And can you identify any more specifically
15 whether that was a complaint in a bankruptcy adversary
16 proceeding, and if so, which one?

17 A I believe it was the Fundamental, the debtor's
18 case in this matter. It was a very large document.

19 Q Okay. More than 200 pages?

20 A It was more than 200 pages, yes, sir.

21 Q That will help us identify it.

22 Were you presented with any other documents to review
23 prior to being retained other than that large complaint?

24 A I don't think I received the complaint until I
25 had been retained, where he acknowledged they were moving

1 forward with the retention and at that point they were
2 sending the document.

3 MS. SCHARRER: Beth Ann Scharrer, Trustee.

4 Q Mr. Oscher --

5 MS. SCHARRER: Excuse me.

6 MR. MCCOSKEY: Yes, go ahead.

7 MS. SCHARRER: I was wondering if we're starting
8 at 9:00?

9 MR. MCCOSKEY: No, Beth Ann. This is Greg. We
10 started a few moments ago. Mr. Berman is here, and
11 Mr. Traub is on the line with you.

12 MS. SCHARRER: Thank you.

13 (Exhibit No. 1 was marked for identification.)

14 BY MR. MCCOSKEY:

15 Q Mr. Oscher, I've marked as Exhibit 1 a letter on
16 Wilkes & McHugh letterhead, dated March 28, 2004. Do you
17 see that?

18 A Yes.

19 Q Do you recognize that document?

20 A Yes.

21 Q What is Exhibit 1?

22 A This is a document acknowledging the retention by
23 the Wilkes & McHugh firm.

24 Q Is it accurate to say, then, that you were
25 retained as of March 28, 2014?

1 A From my perspective it was that this was a formal
2 retention letter, but I had previously been told by Mr.
3 Riedel that I had been retained.

4 Q Can you identify for me as best you can the time
5 when you believe you were retained via that oral
6 communication with Mr. Riedel?

7 A My belief it was in a January, perhaps February
8 time period.

9 Q In that -- going to the oral communication with
10 Mr. Riedel when you believe you were retained, what did you
11 understand your assignment to be at that time?

12 A There were a number of issues that were
13 discussed. I don't know that a specific assignment had
14 been clarified at that point, but there were discussions
15 with regards to successor liability, alter ego, fraudulent
16 transfers, successor in interest. Those were things that
17 had been discussed in a general sense about the case, but
18 nothing specifically at that point had been identified.

19 Q Did there come a point when you were given
20 specific instructions as to what your assignment would be
21 in this case?

22 A Yes.

23 Q When was that?

24 A Probably in the last four weeks.

25 Q So, doing the math, that would have been early

1 May?

2 A Yes, sir.

3 Q Okay. So in early May you were given the
4 specifics --

5 A It may have been at the end of April. I mean, it
6 was sometime in that latter April, May time period.

7 Q So late April, early May, you were given
8 instructions for your assignment in this case, and what
9 were those instructions?

10 A The instructions or the direction was to focus my
11 work and attention on the successor in interest issues.

12 Q From the time you were first advised or given
13 those instructions, have there been any changes to the
14 scope of your assignment as an expert in this case?

15 A No, sir.

16 Q And your retention in this case is by the Wilkes
17 & McHugh law firm; am I right about that?

18 A Yes.

19 Q Have you been retained by Mr. Berman on behalf of
20 the trustee?

21 A No, sir.

22 Q Do you know how the Wilkes & McHugh law firm
23 found you?

24 A It was my understanding, through Mr. Riedel.

25 Q Have you ever served as an expert for the Wilkes

1 & McHugh law firm or any of their clients in the past?

2 A No, sir.

3 Q Have you ever served as an expert for Mr. Riedel
4 or any of that firm's clients in the past?

5 A I have.

6 Q Approximately how many times?

7 A Over the last 20-plus years, a half dozen, dozen
8 times now.

9 Q When was the most recent?

10 A I would have to look at the -- my client listing.
11 I'm not recalling specifically. We have, I believe, a
12 couple matters that are ongoing right now where they've
13 involved us. There's a matter that's still ongoing where
14 I'm the chief restructuring officer in a matter and the
15 Stichter Riedel firm is counsel.

16 Q For any of those matters in which you've been
17 retained by the Stichter Riedel law firm currently or in
18 the past as an expert, can you tell me the subject matter
19 on which you were asked to opine as an expert in any of
20 those cases?

21 A I would have to go back and take a look at the
22 file. It may have been on issues on solvency; it may have
23 been issues on cash collateral. Over the years I believe
24 there's a number of things that I've been retained for.
25 I'm just not recalling specifically.

1 Q For this particular assignment we have seen
2 Exhibit 1, which was a letter sent to you by Mr.
3 Ruiz-Carus. Did you receive anything else in writing from
4 the Wilkes & McHugh law firm related to your services as an
5 expert in this case?

6 A I received documents from them. I mean, if
7 that's...

8 Q Okay. Documents aside, let's talk about
9 correspondence first. Do you recall any other written or
10 electronic correspondence from that firm relating to your
11 retention or assignment as an expert in this case?

12 A There have been e-mails. I think the only
13 subject matter on the e-mails had to do with scheduling
14 appointments or transfer of documents and information.
15 There was nothing related to my assignment or what I was
16 being asked to do specifically.

17 Q So outside correspondence, then, you referenced
18 documents. Did you receive documents either in paper or
19 electric form?

20 A Yes, sir, I did.

21 Q Okay. We will talk about that later then.
22 Was there anything else that you may have
23 received from the Wilkes & McHugh law firm in the form
24 of information related to this case other than
25 correspondence or documents?

1 A I had meetings with Mr. Ruiz-Carus and Mr.
2 Wilkes, and there was another attorney, a woman attorney,
3 whose name I'm not recalling, who was in one of the
4 meetings.

5 Q Have you formed any final opinions in this case
6 on which you're prepared to testify?

7 A I formed opinions. I don't know whether there is
8 a final -- final opinion on issues related to the
9 underlying documents that I understand have been produced
10 but I haven't seen yet. But I have had certain findings
11 and opinions related to those findings, yes, sir.

12 Q As you sit here today, are you prepared to
13 provide testimony regarding any expert opinion in this
14 case?

15 A Yes.

16 Q And tell me, what is that opinion, as specific as
17 you can?

18 A That the entities that I previously identified,
19 being that THIB Management and FAS, were successors in
20 interest to certain assets. That there appears to have
21 been a fraud related to the transfer of those assets to the
22 debtor.

23 Q Anything else?

24 A Not that I can think of at this time.

25 Q From what you've described, is it fair to say

1 those are two discrete opinions that you're prepared to
2 give at this point?

3 A They're discrete in the sense that I think both
4 of them relate to the successor in interest liability, but
5 it is looking at two of the factors or two of the four
6 factors that were identified by Judge Williamson.

7 Q When were those opinions formed?

8 A During the course of the reading and reviewing of
9 the documents that we had been provided by counsel.

10 Q You had identified for me a date of late April,
11 early May when you received your assignment -- final
12 assignment in this case. Did you form your opinions before
13 or after that time?

14 A No. The opinions would have been after that
15 time. But there was a body of information, and I know you
16 had the information that we had received, and we were
17 reviewing those documents after we started receiving them
18 and after the more specific identification of the
19 assignment was made, so that we were now targeting and
20 focusing our attention towards that objective.

21 Q Were you ever given any limits on what you could
22 do to reach your opinion or your opinions?

23 A Not that I'm aware of, no, sir.

24 Q Were you requested to focus on any particular
25 documents or concepts as you formed your opinion?

1 A No, sir.

2 Q Were you given any limits on how much you could
3 bill or time you could spend to form your opinions?

4 A No, sir.

5 Q Was there ever anything that you asked for that
6 you were not provided during the course of your analysis?

7 A There were those financial records that I
8 understood were up in Maryland, and I was waiting to get
9 those additional documents, which I understood Mr. Kapila
10 was charged by the court to go secure, and in
11 communications with Mr. Kapila, he too was waiting for
12 those documents. So the underlying financial documents of
13 Baltimore Management and FAS were documents I was
14 interested in receiving.

15 Q Other than underlying financial documents of THI
16 Baltimore Management and FAS, was there anything else that
17 you requested, any other information you requested to form
18 your opinion, that you never received?

19 A I'm not aware of anything, no, sir.

20 Q What pleadings from the court file did you review
21 in arriving at your opinion?

22 A I don't know that I recall everything that I
23 received. There was a large body of documents that were
24 sent over from the Wilkes & McHugh firm.

25 Q Do you recall ever reviewing a motion to dismiss?

1 A That was the comment -- that was the one that I
2 was going to indicate that was one of the documents that I
3 was using, was Judge Williamson's motion to dismiss.

4 Q Judge Williamson issued an order on a motion to
5 dismiss.

6 A Right.

7 Q So that's a pleading that you reviewed and relied
8 on. What about any of the parties', the defendants',
9 motions to dismiss? Have you ever reviewed any of those?

10 A Again, I'm not recalling with specificity. If it
11 was on the listing for the information considered, I would
12 have looked at it, yes, sir.

13 Q You provided a written report in this case. Tell
14 me who all participated in the drafting of that report.

15 A There was myself; there was a woman, Lisl
16 Unterholzner, an accountant in my office who also
17 participated.

18 Q Anyone else?

19 A Not in the drafting.

20 Q Did you keep any drafts of your report?

21 A I don't believe I did; no, sir.

22 Q Do you -- as you prepare documents on your
23 system, your computer system, do you save subsequent
24 versions individualized and discrete from the prior
25 versions?

1 A No, sir, not typically.

2 Q Do you save hard copies of prior versions of any
3 report until it's issued?

4 A No, sir.

5 Q Did you distribute or provide the Wilkes firm
6 with any drafts of the report?

7 A Yes, sir.

8 Q On how -- approximately how many occasions?

9 A There may have been two occasions.

10 Q On those two occasions that you provided drafts
11 to the Wilkes firm, did you do so electronically with the
12 draft attached to an e-mail?

13 A I'm not recalling whether it was in person or
14 electronically, but it may have been electronic.

15 Q If it were electronically, would you have those
16 e-mails still on your system transmitting draft versions of
17 your report?

18 A I'm sure we do.

19 Q Did any of those drafts have any opinions that
20 differed from the opinions that are contained in your final
21 report?

22 A No, sir.

23 Q Did you receive back any comments from anyone at
24 the Wilkes firm relating to your opinion when you provided
25 drafts?

1 A Relating to the opinion?

2 Q No. To the report.

3 A Yes.

4 Q As best as you can recall, what sort of comments
5 did you receive back on either of the drafts you provided
6 to the Wilkes firm?

7 MR. RUIZ-CARUS: Here I'm going to interpose an
8 objection and an instruction not to answer except to
9 the extent that if you relied on some fact or data
10 that I told you in reaching your opinions or if I gave
11 you some sort of assumption that you relied on in
12 reaching your opinions, either of those two things.
13 Otherwise, I think that our communications are
14 privileged under Rule 26.

15 BY MR. MCCOSKEY:

16 Q Subject to that instruction, can you answer the
17 question?

18 A The best recollection I have is, there's nothing
19 related to the opinion. There was issues or there was
20 comments that were made related to the parties, and I
21 believe that there might have been misstatement in one of
22 the drafts with regards to the acronym, and so it was for a
23 correction of the parties as opposed to anything related to
24 the opinion that I expressed.

25 Q So in any of the comments that you received back

1 from either of the drafts from the Wilkes firm, nothing
2 changed your opinion; correct?

3 A That's correct, yes, sir.

4 Q Okay. Let's focus, then, on the other types of
5 comments, whether it be it factual, legal, or otherwise,
6 outside of your opinion. Were you provided any text,
7 specific text, to include in your report from the Wilkes
8 firm?

9 A No, sir. We -- no, sir.

10 Q Were you provided any written revisions to any
11 report or either report that you provided to the Wilkes
12 firm?

13 A No, sir.

14 Q Were you provided any inserts or tables or charts
15 or anything else from the Wilkes firm to include in your
16 report?

17 A No, sir.

18 I want to make a clarification, because you asked
19 about text, and I think that was your first question,
20 whether I had been provided, and I started to respond. The
21 framework for our understanding and what was corrected was
22 the complaint, which in a sense is the text I've been using
23 as a template for my understanding, so that was the
24 understanding, and then it was the complaint that I was
25 using.

1 Q Okay. Thank you. For right now I'm trying to
2 identify if you received back any written comments,
3 inserts, markups, or anything from the Wilkes firm relating
4 to either of the draft reports that you provided. As I
5 understand it, your answer is no, you did not receive any
6 of those things.

7 A That's correct.

8 Q Okay. If I were to show you a copy of your
9 report, could you identify for me those portions or any
10 language in your report that would reflect changes or
11 revisions suggested to you orally by the Wilkes firm?

12 A I don't know at this point that I could. They
13 really were not of any substance that was primarily -- not
14 so much wordsmithing as ensuring the context, the language,
15 as I had expressed it, where I had taken information from
16 the complaint. Just to make it more readable as opposed to
17 anything specific with regards to, certainly, any of the
18 opinions. I mean, it was just in the background
19 information.

20 Q You identified one instance where you think you
21 had a party or an entity wrong. Can you tell me about
22 that? Which entity had you identified, and which entity
23 did the Wilkes firm correct for you?

24 A I think there was a transposition of whether it
25 was THIMB or -- I mean, it was -- that's what I said. It

1 was more making sure that the parties that were identified
2 were the correct parties.

3 MR. MCCOSKEY: Okay. I want to pause for just a
4 moment. If you're on the phone and you joined us and
5 you did not enter an appearance, we would like to take
6 your appearance now, and then I would ask you to put
7 your phone on mute, please. So if you joined us after
8 initial appearances, if you'd give them now.

9 MR. WISE: Hey, Greg, this is Dan Wise from
10 Ventas. I'm monitoring.

11 MR. MCCOSKEY: Thank you. Anyone else?

12 (No verbal response.)

13 MR. MCCOSKEY: Okay.

14 (Exhibit No. 2 was marked for identification.)

15 BY MR. MCCOSKEY:

16 Q Mr. Oscher, I'm marking a document as Exhibit 2,
17 and I'll ask you to take a look at that and tell me if you
18 recognize Exhibit 2. It is dated May 23rd, 2014, and on
19 its face it says "Prepared by Oscher Consulting, P.A." Do
20 you recognize that document?

21 A Yes, sir.

22 Q What is that document?

23 A That's the report that I issued in this case.

24 Q Have you made any additions or updates to the
25 report since May 23rd?

1 A No, sir.

2 Q Would you turn to page 11. There's a section
3 that's highlighted as "Conclusion," and there are two
4 paragraphs. Would you read aloud the second paragraph,
5 please?

6 A "While my findings to date indicate that there is
7 a basis for determination by the Court of successor or
8 alter ego liability, I will reserve my conclusion until I
9 have received and reviewed the additional documentation."

10 Q What does that mean?

11 A What it meant was that what I had looked at to
12 date indicated and allowed me to conclude that there was a
13 determination or there could be determination by the court
14 of successor liability or alter ego liability, that -- what
15 I was trying to say was that my final conclusion, until
16 I've looked at all those additional documents that I
17 understand had started to be produced as my report was
18 being drafted but I had not reviewed, that I wanted to hold
19 on for any final opinions that I might have relative to
20 those documents.

21 Q Through the date of -- with that qualification,
22 through the date of your report you are opining on the two
23 particular issues that you described for me earlier. Is
24 that accurate?

25 A Yes.

1 Q And you're doing so on the basis of what you had
2 reviewed up through May 23rd, 2014; correct?

3 A Yes.

4 Q Are there any specific subject areas that you
5 were told you would not testify on?

6 A The initial discussions that I had had related to
7 a lot of the discussions -- or a lot of the issues that I
8 mentioned earlier. And when I asked if there would be
9 anything more other than the successor in interest issue, I
10 was informed that there were other experts who were going
11 to be providing testimony on those other issues. So the
12 only thing I was told at that point was the successor in
13 interest issue was for me to do the work on.

14 Q Would you turn to page 3 of Exhibit 2, your
15 report, and there's a heading there that says
16 "Understanding," and it's followed by two pages of text.
17 Can you tell me generally what this section of your report
18 is?

19 A Yes, sir. That's what I alluded to earlier that
20 was primarily constructed out of the complaint.

21 Q And this was constructed out of the
22 200-or-more-page complaint? Is that the one you're
23 referring to?

24 A It was the initial complaint. Then there was a
25 subsequent complaint that I received, and I believe --

1 whether the first was used as well as the second or it was
2 primarily the second complaint that we received that had
3 been pared down, I believe after some findings by the court
4 and another complaint was issued, I believe it was that
5 second one that we were primarily using as the basis for
6 our understanding at that point.

7 Q And so the initial complaint and the subsequent
8 complaint that you're referring to, are both of those
9 complaints where the Wilkes clients and the trustee are
10 listed as plaintiffs?

11 A I'm not recalling.

12 Q Okay. I guess, put another way, whose complaints
13 were they? Who made the allegations in the complaint,
14 either or both that you reviewed?

15 A I'm not recalling, as I sit here, specifically.

16 Q Do you know whether complaints are facts or
17 allegations?

18 A They're allegations.

19 Q If you took those allegations and you used them
20 to provide this section of Understanding in your report, is
21 this section then made up of allegations from complaints?

22 A Basically that's true, yes.

23 Q You're not vouching independently for any of the
24 facts within this Understanding section of your report?

25 A That's correct.

1 Q Are you taking the allegations within this
2 Understanding section of your report as true?

3 A No. I'm taking them as a basis for the
4 allegations on which I'm going to conduct my investigation.

5 Q So, in forming your opinion, are you relying in
6 any way on any of the statements within the Understanding
7 section of your report?

8 A No, sir.

9 Q Is there anything in this Understanding section
10 that you can think of that did not come from allegations in
11 one of the two complaints that you referenced earlier?

12 A Not that I can see.

13 Q Did you accept these allegations as true for
14 purposes of your report?

15 MR. RUIZ-CARUS: Asked and answered.

16 A No.

17 Q Would you agree with me that an expert generally
18 has no specific firsthand knowledge of underlying facts in
19 a case?

20 A I think that's a "depends" kind of answer.

21 Q How about in this case? Do you have any personal
22 firsthand knowledge of any of the underlying facts in this
23 case?

24 A No, sir.

25 Q Any facts that you were provided would have been

1 provided by the Wilkes & McHugh firm or Mr. Berman and his
2 firm; is that right?

3 A You say facts. I had a lot of documents that I
4 received that would have been considered facts. The
5 information that I received would have been from the Wilkes
6 & McHugh firm. I don't know that I received anything from
7 Mr. Berman or his firm.

8 Q Were you required to make any assumptions for
9 purposes of arriving at your opinion in this report?

10 A I'm not aware of any.

11 Q So you have a section in your report starting on
12 page 5 with a header that says "Findings." What is that
13 section?

14 A That section is the indication of -- of the work
15 that I did based on the allegations as they had been made,
16 and the findings that I arrived at as a result of the work
17 that I did.

18 Q Are these findings the complete documentation of
19 the information that you used to form your ultimate
20 conclusions in this case?

21 A I missed the first part about --

22 Q Let me ask it a different way. If you made a
23 relevant finding to your ultimate conclusion in this case,
24 would it be included in this Findings section?

25 A Yes.

1 Q Put another way yet again, are all of the
2 relevant material findings that you made that support your
3 conclusions within this Findings section?

4 A And that I don't know the answer to, because
5 contained within the depositions, contained within some of
6 the information, there were other instances similar to what
7 I had identified in the report, so that there may have been
8 other references to testimony from one of the parties that
9 I had indicated where they had made additional references
10 to transfers of assets or transfers of duties to the other
11 entities, but I just didn't incorporate them here because I
12 had already identified some.

13 Q So for those items from depositions that may have
14 been material to you or relevant to your opinions, those
15 would be duplicative of what's in your Findings section;
16 correct?

17 A Yes, sir, I believe so.

18 Q Nothing new or additional relevant -- that you
19 found to be relevant that was not included in the Findings
20 section?

21 A Not that I recall, sitting here.

22 Q What is successor liability?

23 A It is, I guess, a legal term that relates to an
24 issue of a subsequent entity or entities assuming the same
25 structure, either through its business formation or through

1 its business conduct, as a predecessor company.

2 Q And what, if anything, do you understand is the
3 result or legal effect of a finding of successor liability?

4 A My understanding is it essentially suggests that
5 the successor entity is really the predecessor entity.

6 Q Are you relying on any particular definition of
7 successor liability to arrive at your opinions?

8 A I don't believe so.

9 Q What is the import of including the excerpt from
10 Judge Williamson's memorandum opinion on motions to dismiss
11 on page 6 of your report?

12 MR. RUIZ-CARUS: Form.

13 Q You can answer.

14 A The importance for me was that it was Judge
15 Williamson that laid the foundation for the issues that
16 needed to be identified or should be looked at with regards
17 to successor liability, so it was on that basis that I used
18 his findings and his determination of the factors, or the
19 grounds, as the basis for the work that I would be doing.

20 MR. BERMAN: Greg, whenever it's convenient, can
21 we take a comfort break?

22 MR. MCCOSKEY: Yeah, let's go ahead. We're at a
23 good point now. Let's do that. We'll take 10
24 minutes, for those on the phone. We'll say five, but
25 we know it's 10.

1 (Brief recess was taken.)

2 MR. MCCOSKEY: For those of you on the phone,
3 we're going to pick up in just a moment. If anyone
4 joined since the last portion of the deposition, you
5 can enter your appearance now.

6 BY MR. MCCOSKEY:

7 Q Mr. Oscher, are you ready?

8 A Yes, sir, I am.

9 Q You understand you're still under oath.

10 A Yes, sir.

11 Q We were looking at page 6 of your report, which
12 we marked as Exhibit 2 prior to the break, and we were
13 looking at the four bullet points that you identified in
14 the middle, and I believe you described the purpose of
15 including them in your report. Is it fair to say that this
16 was your starting point for your successor liability
17 analysis?

18 A That's correct.

19 Q Tell me about the first bullet point. Does that
20 play in part in your opinion in this case?

21 A No, sir, it doesn't.

22 Q How about the second bullet point, "The
23 transaction was a de facto merger"?

24 A No, sir.

25 Q And the first bullet point, for completeness,

1 was, "The successor corporation expressly or impliedly
2 assumed the obligations of the predecessor." That's not a
3 portion of your opinion?

4 A Correct.

5 Q How about the third bullet point, that "The
6 successor corporation is a mere continuation of the
7 predecessor corporation"? Is that part of your opinion?

8 A It is.

9 Q And how about the fourth, that "The transaction
10 was a fraudulent effort to avoid the liabilities of a
11 predecessor corporation"?

12 A It is.

13 Q And so as you described to me early in your
14 deposition when I asked you for your -- the opinions you
15 were rendering, you gave me two separate opinions, what I
16 took to be two separate opinions, leading to a conclusion
17 of successor liability. Are those two opinions similar to
18 the two bullet points -- the last two bullet points we just
19 looked at?

20 A Yes, they are.

21 Q If we were to break down your report, then, at
22 the bottom of page 6 there's a heading that says "Successor
23 corporation is a mere continuation of the predecessor
24 corporation." Do you see that?

25 A I do.

1 Q What follows on pages 7, 8, 9, and 10, is that
2 the bases for your opinion rendered on that bullet point
3 that the successor corporation is a mere continuation?

4 A Yes.

5 Q And then if we were to look at page 11 of your
6 report, there is a heading, "The transaction was a
7 fraudulent effort to avoid the liabilities of a predecessor
8 corporation." Is that section that follows through to the
9 Conclusion heading, is that the support for your opinion as
10 to the final bullet point on page 6?

11 A Yes.

12 Q Is it okay with you if I refer to your first
13 opinion as the "mere continuation theory" or "mere
14 continuation opinion"?

15 A Yes.

16 Q You'll understand what I'm talking about?

17 A I believe so, yes.

18 Q You described for me earlier that the -- in your
19 opinion, the successor entities are THI of Baltimore
20 Management and FAS. Is that correct?

21 MR. RUIZ-CARUS: Form.

22 A I believe so, yes.

23 Q Is it your opinion that Fundamental Long Term
24 Care Holdings, LLC, is a successor corporation under the
25 mere continuity theory?

1 A I don't know. I mean, from a legal standpoint I
2 don't know. I mean, because they were the holding entity
3 for those other entities that you've described, so...

4 Q Well, sir, I'm asking you about the extent of
5 your expert opinion as to which companies are potentially
6 successor -- have successor liability, and you've
7 identified two, and I'm asking now whether FLTCH, in your
8 opinion, is a successor entity subject to successor
9 liability.

10 MR. RUIZ-CARUS: Form.

11 A Again, it would seem that it's a legal question
12 that you've asked. FLTCH is the entity that I believe owns
13 the two entities to which assets were transferred, so...

14 Q If, as you say, that's a legal determination,
15 then someone else will make that determination. You're not
16 opining on that. Is that correct?

17 A That's correct. I don't believe so.

18 Q Do you identify or opine that Murray Forman is a
19 successor to or has successor liability under the mere
20 continuation theory?

21 MR. RUIZ-CARUS: Form.

22 A I think the answer is the same. That seems to be
23 a legal determination by someone else, not myself.

24 Q You are not opining that Murray Forman has
25 successor liability or is a successor as part of your

1 expert opinion, are you?

2 A That's correct.

3 Q The same question for Len Grunstein?

4 MR. RUIZ-CARUS: Form.

5 A Same answer.

6 Q And the same question for THI Of Baltimore, Inc.

7 You're not opining that THI of Baltimore, Inc., is

8 successor corporation, are you?

9 A Same answer.

10 Q You are not?

11 A I am not.

12 Q What about Fundamental Clinical Consulting, LLC?

13 A Same answer.

14 Q You are not opining that that is a entity that

15 would have -- that is a successor?

16 A I'm not providing an opinion. I don't know.

17 That seems to be a legal question.

18 Q Can you summarize for me the facts that you

19 relied upon to conclude that THI Baltimore Management and

20 FAS are the successors of THI Holdings and THI of

21 Baltimore, Inc.?

22 MR. RUIZ-CARUS: Form.

23 A And by "summarize," can you help -- can you be a

24 little more clear?

25 Q Well, perhaps -- and you've told me that all of

1 your relevant factual findings are identified in the
2 report. We can walk through that item by item, if that's
3 easier.

4 A It might be easier, yes.

5 Q Okay. And that would cover all of your relevant
6 material facts that you used to support your ultimate
7 opinions?

8 A That's true.

9 Q Okay. On page 7 in the first paragraph, tell me
10 about that. You are summarizing deposition testimony of
11 Mark Fulchino and Sean Nolan. How does that support your
12 ultimate mere continuation opinion?

13 A Their testimony was that the former -- as I state
14 here, that the employees, officers, of THMI and the service
15 that had been provided previously were now the same
16 services that are being provided by THMI of Baltimore and
17 then subsequently in the fall of 2006 by FAS.

18 Q And what services are you referring to? Those
19 that are identified in that paragraph on page 7?

20 A Yes, sir.

21 Q Aren't those services essential to any operator
22 in the industry?

23 MR. RUIZ-CARUS: Form.

24 A I would think that was true, yes.

25 Q You've identified accounting, payroll, finance,

1 tax, accounts payable, treasury, and legal support as those
2 similar services that led to your ultimate conclusion.
3 There's nothing exotic in that list as to any operating
4 entity, is there?

5 MR. RUIZ-CARUS: Form.

6 A No.

7 Q Any operating business would need those services
8 in some form or fashion, for the most part; correct?

9 A I agree.

10 Q So, what is it about the provisions of these
11 services that supports your mere continuation theory?

12 A The fact that it's the same individuals who had
13 previously been there for THMI are now essentially doing
14 the same operation for THMI Baltimore.

15 Q So it's not the specific services themselves that
16 lead you to the conclusion; it's the parties that are
17 performing them?

18 A Absolutely.

19 Q And if we look forward on page 7, there's a
20 paragraph referencing Ken Tabler's deposition. The
21 following paragraph references an examination of employee
22 rosters. Is that the same thing that we were just
23 discussing? The identity of the parties providing services
24 is what leads you to your conclusion?

25 A Yes.

1 Q And is that the same for the balance of this
2 section other than the bullet points on the top of page 9?

3 A That's true.

4 Q So all of that other information, in summary is,
5 the parties performing the services led you to your
6 conclusion; correct?

7 A Yes. And there is another component at the
8 bottom of page 9, where there's a chart of certain
9 individuals, as well, from the management.

10 Q And tell me about that. That is similar to what
11 we have been talking about. Your chart identifies who were
12 officers of THI Baltimore Management; right?

13 A Right.

14 Q So the identify of the persons performing the
15 services is still what led you to your conclusion on
16 successor liability?

17 MR. RUIZ-CARUS: Form.

18 A Yes, sir. I was only commenting to that because
19 -- about the way your last question was asked. The issue
20 on personnel ended at the top of page 9. I just wanted for
21 clarification that the bottom half of page 9 also had some
22 issues with regards to management.

23 Q Okay. I think we were saying the same thing. My
24 question was, for everything in this section other than the
25 bullet points on the top of page 9, which would have been

1 inclusive of that chart on the bottom of page 9, all of
2 that could be summarized as the identity of the persons
3 performing the services. That's what supports your
4 conclusion; correct?

5 A Yes.

6 Q Tell me about the three bullet points on the top
7 of page 9. How do they support your ultimate opinion?

8 A These are indicia with regards to the
9 continuation of the business. The fact that the first
10 bullet point references the location, that there was never
11 a change in location from what previously had existed for
12 THMI. The office furniture was still being used; the
13 computers were still in use; the accounting software
14 remained in use.

15 Q Anything else?

16 A No, sir.

17 Q All right. So let's break those down. On the
18 first bullet point the same office buildings at Ridgebrook
19 Road in Sparks, Maryland, how do you know that?

20 A From the deposition of -- it may have been all
21 three, but Mr. Tabler's testimony related to those three
22 areas, and I believe Mr. Nolan and Mr. Fulchino also
23 acknowledged that the location and furniture and fixtures
24 and software were all still being used.

25 Q Do you know whether THMI was ever the lessee of

1 that office space?

2 A If I know, I don't recall.

3 Q Would it make a difference to your opinion if you
4 were to learn that THMI never was the lessee of that office
5 space?

6 MR. RUIZ-CARUS: Form.

7 A I don't believe it changes the opinion.

8 Q If I told you that THI of Baltimore, Inc., was
9 the lessee of that office space, would that change your
10 opinion?

11 MR. RUIZ-CARUS: Form.

12 A I don't believe so, no, sir.

13 Q If THIB and affiliated companies of it after
14 March 2006 occupied space in which THIB was the lessee,
15 would that change your opinion?

16 A No, sir, I don't believe so.

17 Q If THIB were the lessee of that Sparks, Maryland,
18 office space, wouldn't it be perfectly reasonable for THIB
19 and its affiliates to occupy that space after the March
20 2006 transaction?

21 MR. RUIZ-CARUS: Object to the form.

22 MR. CARROLL: Form.

23 MR. BERMAN: Form.

24 A It's possible, sure.

25 Q If THIB was the lessee before and after the

1 transaction and THIB and its affiliates occupied the space
2 after the transaction, wouldn't that be expected?

3 MR. RUIZ-CARUS: Form.

4 A It could be. Sure.

5 Q Assuming those facts that I just gave you are
6 true, why would THIB as the lessee holding the space before
7 and after 2006 be an indicia of successor liability as
8 you've outlined it here?

9 A Mine is merely -- using the term "mere" for the
10 continuation -- that they have continued to occupy the same
11 space that THMI previously occupied. It's just one of a
12 number of indicia. And the fact that there may be other
13 legal points that you're raising doesn't change the overall
14 conclusion.

15 Q You haven't investigated any of the underlying
16 legal facts or conclusions that I've been asking you about,
17 have you? Beyond what's in your report?

18 MR. RUIZ-CARUS: Form.

19 A I have not researched any legal facts. That's
20 correct.

21 Q So your opinion is merely based on the extent of
22 the statement in this first bullet point that the same
23 office buildings were occupied, irrespective of any legal
24 entitlement before or after 2006. Is that right?

25 A That's true. And it's --

1 MR. BERMAN: Objection. Form.

2 A And it's based on the testimony of Mr. Tabler,
3 Mr. Nolan.

4 Q When you say it's based on the testimony, limited
5 to the fact that you've identified in the first bullet
6 point; right? And nothing beyond that?

7 MR. RUIZ-CARUS: Form.

8 A That's true.

9 Q The second bullet point, "The offices, office
10 furniture, and substantially the same computers remained in
11 use." Do you know whether THMI ever owned any of those
12 items?

13 A I'm not recalling from the records that I've
14 seen. I'm not sure whether the records that I might
15 receive when they're produced might not give some
16 indication.

17 Q But you've already expressed an opinion based
18 upon this statement in this bullet point, and as you sit
19 here today, you don't know whether THMI ever actually owned
20 any of that property. Is that right?

21 A Again, I've expressed an opinion based on the
22 testimony of the individuals working for the company.

23 Q Was that testimony as to ownership that you're
24 relying on?

25 A Well, as it relates to the computers, my

1 recollection is that those were computers that had been
2 sold to the debtor in this case, but were left at the
3 location at Sparks and were being used at the location at
4 Sparks. So there seemed, at least from my recollection, to
5 be corroboration that in order to sell it, they must have
6 owned it. But have I seen the documents? The answer is
7 no.

8 Q Do you know specifically what computer equipment
9 THMI is alleged to have owned in 2006?

10 A No, sir, I don't.

11 Q Do you know anything other than generically
12 computer equipment as a description of what THMI might have
13 owned in 2006?

14 A No, sir, I don't.

15 Q Do you know whether THMI owned any office
16 furniture in 2006?

17 A Again, if I saw documents, I'm not recalling as I
18 sit here with you.

19 Q Is the full extent of the support for your
20 opinion regarding the use of offices, office furniture, and
21 computers limited to that of this second bullet point on
22 page 9?

23 A It's limited to my knowledge based on the
24 testimony. If that was your question, the answer is yes.

25 Q Okay. But that testimony didn't relate to

1 ownership, is what I'm trying to understand. Are you
2 suggesting that you're relying on testimony of anything
3 beyond the fact that's stated in this second bullet point?

4 A I don't believe so, other than my comment that I
5 made with regards to it was my understanding that the
6 computers that had been sold were, in fact, still being
7 used in Sparks, Maryland.

8 Q But you don't know the extent of what the
9 computer equipment may have been that was sold; correct?

10 A That's correct.

11 Q How about the third bullet point, the accounting
12 software? How is that -- strike that.

13 Do you know whether THMI ever owned PeopleSoft or
14 other accounting software?

15 A Not specifically, no, sir.

16 Q Would it make a difference to your opinion if
17 THMI -- if you were to learn that THMI never owned the
18 PeopleSoft accounting software?

19 A I don't believe so, no, sir.

20 Q Well, let me give you a hypothetical. If THI of
21 Baltimore, Inc., owned the accounting software, the
22 PeopleSoft accounting software, and THMI was permitted to
23 use it up until the point that it was sold, but THI of
24 Baltimore, Inc., and its affiliates continued to use the
25 accounting software after THMI were sold, would that be

1 material to your ultimate opinion?

2 MR. RUIZ-CARUS: Form.

3 A Again, I don't believe so. I think even within
4 your question they continued to use it. The issue has to
5 do with the continuation of the business and the
6 identification of the various indicia. The location is an
7 indication of continuation; the software is a continuation;
8 the computers and furniture is a continuation of the
9 business. These are merely the indication of what that
10 continuation might have been.

11 Q And you are using these factors as indicia of
12 continuation without any investigation into the underlying
13 legal ownership of these assets; correct?

14 A Yes, sir.

15 Q So far, for your mere continuation opinion,
16 starting on page 6 and through the bottom of page 9, we
17 have identified as the bases for your opinion the personnel
18 that performed services and these three bullet points as
19 the factors that lead to your conclusion; is that right?

20 A Yes.

21 Q Okay. On page 10, tell me about the information
22 on page 10 and how that leads to your ultimate opinion.

23 A The testimony by Ms. Anderson with regards to the
24 transactions and the fact that THMI was being supported,
25 after the sale had taken place, by Baltimore THIBM and

1 subsequently FAS was what's at the heart of her testimony,
2 from my perspective.

3 Q And is that within primarily the first paragraph
4 of this page 10?

5 A That they continued to act on behalf of THMI?
6 That's correct, yes.

7 Q And insofar as you're relying on the testimony of
8 Christy Anderson, is that limited to the provision of legal
9 services, as you identify in the first paragraph of page
10 10?

11 A Yes.

12 Q What is the termination and assumption agreement
13 that you reference in the second paragraph on page 10?

14 A There was an agreement that had been referred to
15 with regards to, if I'm not mistaken, THMI in a matter that
16 was in litigation in New Mexico. And it had been
17 represented to the Court that there had been a termination
18 and assumption agreement that was in effect. And Ms.
19 Anderson testified that she was aware that that had been a
20 fabrication, that it wasn't until sometime later that year,
21 if I'm not mistaken, in November of 2006, that the
22 termination and assumption agreement was actually drafted.

23 Q Those facts, if true, how do they support your
24 ultimate conclusion of mere continuation?

25 A That probably might have raised more with regards

1 to the second area, which is with regards to the fraudulent
2 activity, but I included it here simply because of the
3 issues surrounding the continuation of THMI and the fact
4 that the other business entities were essentially taking
5 care of the legal work for THMI subsequently.

6 MR. MCCOSKEY: I'm sorry. Can you read back that
7 answer?

8 (Requested answer was read back.)

9 BY MR. MCCOSKEY:

10 Q Do you know who was the ultimate owner of the
11 Vida Encantada entity that's referenced in the excerpt of
12 testimony that you have on page 10?

13 A If I knew, I don't recall here.

14 Q I believe you said that you relied upon Ms.
15 Anderson's testimony that a prior representation had been
16 made to the Court that this agreement, this termination and
17 assumption agreement, existed before it was prepared; is
18 that correct?

19 A Yes.

20 Q You relied on that testimony from Christy
21 Anderson; right?

22 A Yes.

23 Q If that testimony turns out to be false, would
24 that change your opinion or your reliance on her testimony?

25 A It would change as it relates to the fraud aspect

1 of it to the extent that she was part of the litigation
2 group -- the attorney group at FAS or at Baltimore. The
3 fact that they were continuing to provide services after
4 the sale of THMI to the debtor, it would still go along the
5 support for the continuation of business by Baltimore and
6 FAS.

7 Q If I ask you to assume several facts, that the
8 Vida Encantada entity that is identified as a party to this
9 termination and assumption agreement was an indirect
10 subsidiary of THI Baltimore, Inc., and further assume that
11 FAS had an administrative services agreement with the Vida
12 Encantada entity to provide legal support services to the
13 Vida Encantada entity, and further assume that FAS retained
14 outside counsel to prepare the termination and assumption
15 agreement on behalf of the Vida Encantada entity; if you
16 assume those three facts are true, what to you find
17 fraudulent in the transaction that's described in Ms.
18 Anderson's deposition?

19 MR. RUIZ-CARUS: Form.

20 A I think the fraud, as I understood it, had to do
21 with the timing of the fact that it was prepared after a
22 declaration had been made to the court that such a document
23 existed.

24 Q You don't know one way or the other whether such
25 a representation had been made to the court that the

1 document existed; correct?

2 MR. RUIZ-CARUS: Form.

3 A I wasn't there. It's my understanding that Ms.
4 Anderson testified that Marsha Rydberg had made such
5 representation, but I was not there. I'm not specifically
6 knowledgeable. I know what Ms. Anderson had testified to.

7 Q The basis for your statement that a court had
8 been provided with a fraudulent document -- strike that.
9 The basis for your understanding that a representation had
10 been made to the court that the document existed before its
11 preparation is solely from Ms. Anderson's deposition; is
12 that right?

13 A I think that's correct, yes, sir.

14 Q And if her testimony turned out to be false,
15 would you have grounds to reevaluate your reliance upon it?

16 MR. RUIZ-CARUS: Asked and answered.

17 A Of course.

18 Q So for this portion on page 10 beginning on the
19 second paragraph relating to the termination and assumption
20 agreement, you've told me there are two aspects of that
21 that you're relying on. First, the continued provision of
22 legal services as you identified in the first paragraph,
23 and second, also as to your second opinion on fraud. Is
24 that right?

25 A Yes.

1 Q Is there anything else that this portion -- this
2 last portion on page 10 that we've been talking about, is
3 there any other application of this information to your
4 opinions?

5 A No, sir.

6 Q Would you turn to page 11 of your report, please.

7 A Yes, sir.

8 Q And I think we have identified in your prior
9 testimony that this section on the top half of page 11 is
10 the factual basis and support for your fraud opinion;
11 correct?

12 A Yes.

13 Q And when I say "your fraud opinion," is that an
14 appropriate shorthand for the second opinion that you've
15 rendered, the fraudulent avoidance of liabilities?

16 A Yes.

17 Q Okay. I just -- there may be a technical
18 difference, but I want to talk to you about it in general
19 terms, and you're okay with that?

20 A I am, yes.

21 Q All right. Tell me about the facts that you've
22 relied upon here relating in this section that refers to
23 Mr. Saacks, how that leads to your conclusion that there
24 was a fraudulent effort to avoid liabilities of a
25 predecessor corporation?

1 A It is my understanding that Mr. Saacks was made
2 the director of the debtor, that he had ostensibly
3 purchased THMI and was made the debtor by Mr. Forman and
4 Mr. Grunstein, as I understood it; that he had no knowledge
5 of the purchase; that he had testified that he had not been
6 aware of the fact that he was the director, that he was the
7 owner; that there had been two payments that he had
8 received for \$2,000 each to sign his name on two documents.

9 Q And from what information do you derive the
10 information you just recited to me? That's not your
11 personal firsthand knowledge; right?

12 A My knowledge came through his own testimony from
13 his deposition. There was a memo that -- well, I received
14 the documents that I've referenced here, the Bates-numbered
15 documents related to the amounts paid to Mr. Saacks, and
16 then subsequently an invoice for reimbursement that I
17 believe Mr. Forman requested or Mr. Grunstein requested.
18 There was also an e-mail, a memorandum that I had that was
19 drafted by, I believe, someone at the law firm of Mr.
20 Baker, that made reference to the use of Mr. Saacks and the
21 payment for his signatures and some concerns related to
22 that. There was issues that had been raised with regards
23 to Mr. Saacks by Ms. Anderson.

24 So there was several indicia that I had from the
25 various documents that I had been provided that gave me the

1 knowledge I had about the fraudulent issues surrounding Mr.
2 Saacks's involvement.

3 Q The sources that you've identified were Mr.
4 Saacks' testimony, Mr. Baker's e-mail, the documents
5 Bates-stamped and referenced in your report, and Ms.
6 Anderson's testimony that you relied upon as the basis for
7 this section. Is there anything else?

8 A There may have been. I'm just not recalling, as
9 I'm sitting here with you now.

10 Q You make the statement -- and I'm paraphrasing --
11 in the first sentence, it appears that Mr. Saacks had no
12 idea he purchased THMI. What's the basis for your -- for
13 making that statement?

14 A Mr. Saacks.

15 Q Have you ever personally observed Mr. Saacks?

16 A No, I've never observed Mr. Saacks.

17 Q You've never met him?

18 A No, sir.

19 Q You've never talked to him on the phone?

20 A No, sir.

21 Q So the basis of Mister -- when you say Mr.
22 Saacks, is it a reading of his deposition testimony?

23 A Yes.

24 Q Do you know when that testimony was given?

25 A I don't recall the date.

1 Q Do you have any basis to conclude what Mr.
2 Saacks' mental state was in 2006 as opposed to the time he
3 gave his deposition?

4 A No, sir.

5 Q You have no idea what he knew or did not know in
6 2006 at the time; correct?

7 A Correct.

8 Q If Mr. Saacks received payments to sign documents
9 and acquire THMI, what's the -- describe the fraud for me
10 as it relates to that fact.

11 A I think it is an indicia of what might be
12 construed to be the fraudulent conduct of the parties to
13 have somebody as a strawman signing for an entity that he
14 did not know he owned or was acquiring. That why you would
15 pay an owner for his signature on a document that as an
16 owner he would provide without compensation. As a business
17 transaction, it doesn't make any sense.

18 Q Your opinion is that the transaction was a
19 fraudulent effort to avoid the liabilities of a predecessor
20 corporation; correct?

21 A My opinion is that it is the use of Mr. Saacks
22 and the indicia that I just indicated to indicate that it
23 was a fraudulent effort to avoid the liabilities.

24 Q Okay. Whose fraudulent efforts were they, in
25 your opinion?

1 A Well, I believe it -- I don't know who ultimately
2 it might be. I'm aware that the prior owners who had set
3 up the corporation that eventually was acquired was Mr.
4 Forman and Mr. Grunstein, and that they transferred
5 essentially the ownership of that entity to Mr. Saacks.
6 But who ultimately would be liable, I don't know, sir.

7 Q Okay. But in reaching a conclusion that there
8 was fraud relating to the transfer of assets to the debtor,
9 you can't identify any party who committed the fraud?

10 MR. RUIZ-CARUS: Form.

11 A To the extent that it is a -- the parties who set
12 up the transfer, who made the purchase of THMI available to
13 Fundamental, to Mr. Saacks, I believe would be the parties
14 who would be liable.

15 Q And as -- as you -- in forming your opinion, who
16 is it that you believe set up the transfer and made the
17 debtor available to Mr. Saacks?

18 A Who set it up was the law firm, the Troutman
19 Sanders law firm, but it was done at the request of Mr.
20 Grunstein and, I understood, Mr. Forman.

21 Q Anyone else?

22 A Again, I'm imagining the parties who controlled
23 the transaction that -- that allowed the transfer, which as
24 I think I had previously indicated, would have been the
25 FLTCH, the Holdings, the Baltimore, and FAS.

1 Q You've identified the fraudulent efforts in
2 setting up the transaction as being the Troutman law firm,
3 Grunstein, Forman, FLTCH, FAS, Holdings, and then you
4 referred to a Baltimore entity. Are you referring to THI
5 Baltimore, Inc., or THI Baltimore Management?

6 MR. SOLOTOROVSKY: Objection. Form.

7 A Again, I believe it may have been Management, but
8 who was ultimately responsible, like I said, I believe to
9 be a legal determination.

10 Q So for purposes of your expert opinion are you
11 extending the opinion that there was fraud related to the
12 transfer of assets to the debtor to any particular party?

13 MR. RUIZ-CARUS: Form.

14 A The parties who were involved in the transfer,
15 whoever that is determined to be by the court.

16 Q Okay. But you're not going to opine as an expert
17 that there was fraud and the fraud was committed by party X
18 or Y; is that right?

19 MR. RUIZ-CARUS: Form.

20 A I don't believe I'm going to identify who the
21 liability would go to. The fact that it was a -- the
22 appearance of a fraudulent transaction, that's what I will
23 testify to.

24 Q But you're not going to testify as to the parties
25 that conducted the transfer that you consider to be

1 fraudulent; is that right?

2 MR. RUIZ-CARUS: Asked and answered.

3 A Again, I'm not recalling specifically who those
4 parties are, but whoever those parties are are the ones who
5 I would be testifying to allowed this transfer to take
6 place.

7 Q Mr. Oscher, here is the difficulty I'm having, is
8 that there could be two potential applications of your
9 opinion. There could be, for example, you opining that
10 this transaction had indicia of fraud surrounded by it.
11 Alternatively, there could be your opinion that parties X,
12 Y, and Z committed a fraud through this transaction. Do
13 you see the difference between the two?

14 A I'm understanding what you're saying as to why,
15 and I'm speaking to the transaction as a -- what I believe
16 to be a fraudulent transaction. I am not speaking to the
17 liability specifically as to who would be -- who would be
18 the grieving party, if you will.

19 Q So just to be clear, you are not -- your opinion
20 is not tying any particular actor to fraudulent
21 liabilities; your opinion is limited to a description of
22 the transaction itself --

23 MR. RUIZ-CARUS: Form.

24 Q -- is that fair?

25 A It's fair in the sense that -- to the extent that

1 it would be whoever it was who allowed the transfer to take
2 place would be that party. I'm not specifically
3 identifying who those are, to answer your question, because
4 I'm just not recalling specifically. But whoever allowed
5 the transfer, whoever allowed Mr. Saacks to become a party
6 to this transaction and what I believe to be fraudulent
7 effort, I mean, that's where the liability would go.

8 Q You've described your fraud opinion as that there
9 appears to have been fraud related to the transfer of
10 assets to the debtor. That's what you told me at the
11 outset of the deposition. Does that sound right?

12 A What was transferred, it was a stock purchase.
13 Supposedly certain assets and liabilities were transferred
14 as a result of that, so it's the entire business of THMI
15 and the stock associated with it that was at the heart of
16 the fraudulent transfer.

17 Q Okay. We talked about fraudulent transfer, and
18 we talked about your two separate opinions on successor
19 liability.

20 A Right.

21 Q Excuse me. I'm still referring to your second
22 opinion on successor liability related to fraud.

23 A Right.

24 Q Okay. You say on page 11 of your report that the
25 transaction was a fraudulent effort to avoid the

1 liabilities of a predecessor corporation.

2 A Right.

3 Q Is that your opinion?

4 A Yes.

5 Q Who is the predecessor corporation, in your
6 opinion?

7 A The predecessor would have been the -- the THMI
8 entity and the owner of THMI before it was sold.

9 Q And which liabilities do you opine were sought to
10 be avoided?

11 A There were liabilities related to litigation that
12 had -- and judgments associated with that litigation that
13 were being avoided.

14 Q Which judgments were sought to be avoided?

15 MR. RUIZ-CARUS: Form.

16 A There were three or four pieces of litigation
17 that awards of -- or judgments had been entered into or
18 that were under appeal, that formed the basis of the
19 litigation liabilities that existed. I don't specifically
20 recall all the different pieces that made up. It was over
21 a billion dollars of litigation.

22 Q And who or which entities were potentially liable
23 for those litigation liabilities?

24 MR. RUIZ-CARUS: Form.

25 A At the time it was my understanding it was, you

1 know, the THMI or the entity that was owning THMI.

2 Q At the time of the 2006 stock transaction was FAS
3 potentially liable for any of those litigation or judgment
4 claims from THMI?

5 MR. RUIZ-CARUS: Form.

6 A I don't know the answer. I don't even know that
7 FAS was even formed until after that time.

8 Q How about FLTCH? Do you know whether FLTCH at
9 the time of the transaction was potentially liable for any
10 of those claims that you suggest were avoided?

11 MR. RUIZ-CARUS: Form.

12 A Again, I don't even know that they were in
13 existence at the time. But you've asked me a legal
14 question. I don't know the answer to that.

15 Q And I expect your answer would be the same if I
16 asked you about Mr. Forman, Mr. Grunstein, or THI
17 Baltimore, Inc.?

18 A The answer would be the same.

19 Q Okay. Are you opining on any measure of damages
20 in this case?

21 A No, sir.

22 Q Is there any other opinion that you are expected
23 to provide testimony in support of other than what we have
24 just reviewed in your report and discussed in the balance
25 of your deposition?

1 MR. RUIZ-CARUS: Form.

2 A There hasn't been anything else discussed, but
3 there is still documents that I anticipate receiving,
4 that's just what I referred to have been recently produced.
5 To the extent that they provide additional information,
6 there may or may not be comments or opinions that I have as
7 it relates to those documents.

8 Q Are you expressing any expert opinion on
9 fraudulent transfer?

10 A No, sir.

11 Q You're not opining on solvency or reasonably
12 equivalent value in this case?

13 A No, sir.

14 Q Your opinions are limited to the two aspects of
15 successor liability that we have identified and discussed?

16 A Yes, sir.

17 Q Sir, in your report that's Exhibit 2 in front of
18 you, Exhibit C has several pages attached to it, and the
19 heading on that is "Information Considered," and it's pages
20 1 through 13. Do you see that?

21 A Yes, sir.

22 Q Is this a comprehensive list of all of the
23 documents that you reviewed in connection with your service
24 as expert in this case?

25 A Yes.

1 Q Are there any documents that you reviewed that
2 are not listed on this Exhibit C? And to be fair, I'll say
3 that your counsel sent yesterday, which we'll mark in a
4 moment, an Assignment for the Benefit of Creditors summary
5 or presentation, which we'll talk about in a moment. But I
6 want to be clear on what documents you reviewed, so let me
7 start over.

8 Is there any information or any documents
9 that you received and reviewed other than those listed
10 on Exhibit C?

11 A I don't believe so.

12 Q And of those items listed on Exhibit C, are there
13 any here that you considered to be the most relevant to
14 your ultimate opinions?

15 A The ones that were the most relevant is what I've
16 included as references in my report.

17 Q Are there -- is there information or documents
18 identified on this Exhibit C that you didn't review, or
19 have you reviewed them all?

20 A Either I or Lisl Unterholzner, who I indicated
21 earlier had looked at the documents as well.

22 Q And were all of these documents reviewed by you
23 or Lisl prior to March 23rd, 2014?

24 A Yes, sir.

25 Q How were these documents provided to you?

1 A I believe some may have come in hard copy, some
2 were provided electronically, and some may have been
3 provided by delivery.

4 Q Who prepared this Exhibit C?

5 A My administrative assistant in the office.

6 (Exhibit No. 3 was marked for identification.)

7 BY MR. MCCOSKEY:

8 Q And just to be complete, I have marked a document
9 as Exhibit 3 that I would ask you to take a look at. It's
10 an e-mail followed by several pages typed with a heading
11 "Assignment for the Benefit of Creditors." Do you see
12 that?

13 A Yes.

14 Q I'll represent to you this was an e-mail that
15 was --

16 MR. BERMAN: Do you have copies?

17 MR. MCCOSKEY: I do and --

18 MR. BERMAN: It wasn't part of the packet you
19 gave us.

20 MR. MCCOSKEY: That's it.

21 MR. BERMAN: The whole paper-clipped document
22 you're going to mark as 3?

23 MR. MCCOSKEY: Yes, it's 3. If there was one
24 that you didn't get, I'm sorry. If you want to look
25 at the witness's, that's fine. I apologize.

1 BY MR. MCCOSKEY:

2 Q Mr. Oscher, the -- I'll represent to you that
3 through the first page, the cover e-mail, this is a
4 document that Mr. Ruiz-Carus sent to me yesterday, and the
5 remaining portion of Exhibit 3 was attached to it.
6 Do you recognize the document that's attached to the
7 e-mail?

8 A I've seen this e-mail before.

9 Q You've seen the document attached to the e-mail
10 before?

11 A Yes, sir. I'm sorry. That's what I meant.

12 Q And what is that document?

13 A It is a memo. It is something that was prepared
14 some time back by Judge Williamson.

15 Q Is it something that you reviewed and relied upon
16 in reaching your opinions in this case?

17 A The simple answer is no.

18 Q Okay. Were you provided with any attorney work
19 product from Mr. Ruiz-Carus in arriving at your opinions?

20 A No, sir.

21 Q Any --

22 A Not that I'm aware of, no, sir.

23 Q Any memos?

24 A No, sir.

25 Q Any summaries?

1 A No, sir.

2 Q Did you rely on any treatises for your ultimate
3 opinions in this case?

4 A No, sir.

5 Q Other than meetings with representatives of the
6 Wilkes & McHugh law firm, did you consult with or interview
7 anyone else in arriving at your opinions in the case?

8 A No, sir.

9 Q As you were reviewing the documents that you
10 identified on Exhibit C, did you find any document or did
11 you review any document that's contrary to your ultimate
12 opinion in the case?

13 A I don't believe so, no, sir.

14 Q There is nothing you've seen or reviewed to date
15 that was provided on Exhibit C that would be contrary to
16 your opinions in the case. Is that your testimony?

17 A My testimony, if there is, I'm not recalling it.

18 Q Did you ever ask anyone what the view of the
19 other side was on the defense side of the case?

20 MR. BERMAN: Objection to form.

21 A I think that the way the pleadings were struck,
22 or what I reviewed, indicated that the position of the
23 other side was that it was not a fraudulent transfer, that
24 it was a transfer that was conducted in the ordinary course
25 of business.

1 Q Did you ever ask anyone at the Wilkes & McHugh
2 firm to explain those theories to you so you could
3 understand and have a complete picture of the differing
4 views on successor liability in the case?

5 MR. RUIZ-CARUS: Before you answer, I'll
6 interpose an instruction not to answer to the extent
7 that it's a communication you had with me or another
8 attorney at the firm, except to the extent it may have
9 been a fact or some data or some assumption you relied
10 on in coming to one of your conclusions in this case.

11 MR. MCCOSKEY: Before you answer, I want to make
12 clear, Mr. Ruiz-Carus, I'm asking whether a
13 communication existed, and I'm not asking for the
14 substance of the communication. I'm simply asking
15 whether Mr. Oscher sought to obtain --

16 MR. RUIZ-CARUS: I'm fine with that question.

17 MR. MCCOSKEY: Okay.

18 MR. RUIZ-CARUS: I think the way you phrased it
19 before suggested that we actually communicated with
20 him the substance of what the defense was.

21 MR. MCCOSKEY: Fair enough.

22 BY MR. MCCOSKEY:

23 Q Do you understand the distinction of what we're
24 discussing, Mr. Oscher?

25 A I do.

1 Q Okay. Without getting into any protected areas,
2 did you have communications with Wilkes & McHugh, seeking
3 to understand the defendants' positions or theories on
4 successor liability in the case?

5 A There may have been in a general sense early in
6 the discussions.

7 Q And other than what you've testified to a moment
8 ago, do you recall anything else as it relates to the
9 defendants' positions on successor liability?

10 A No, sir.

11 Q Did you ever ask anyone for any documents that
12 the defendants were relying on in defense of the successor
13 liability counts?

14 A There was no specific request, no, sir.

15 Q Sir, would you turn to Exhibit A of your report.
16 It appears to be a one-page document. Is this a current CV
17 of yours?

18 A Yes.

19 Q Do you know approximately when the last change
20 was made to this document?

21 A No, sir.

22 Q Has it been more than a year since any change has
23 been made to this document?

24 A It might have been changed -- or it might have
25 been less than a year, but I see something that -- I'm no

1 longer a part of the National Roster of Neutrals for the
2 American Arbitration Association. But I believe everything
3 else is complete.

4 Q Okay. You've anticipated my next question. Is
5 there anything on here that needs to be changed, updated,
6 or that is incorrect? You've identified that you are no
7 longer a part of the National Roster of Neutrals for the
8 American Arbitration Association. Other than that?

9 A It's not on here. I was notified a week ago that
10 I had been elected to the Hillsborough County Bar
11 Association Foundation Board.

12 Q Okay. You haven't made any updates to your CV
13 since May 23rd, 2014, have you?

14 A No, sir, I haven't.

15 Q Is there anything on the CV that you believe
16 would be misleading to an objective reader of it?

17 A I would hope not.

18 Q The Association of Certified Fraud Examiners that
19 you identify here, what are the requirements for membership
20 in that association?

21 A There is a background of work, there's an
22 examination, and there is continuing professional
23 education.

24 Q What about the National Association of Forensic
25 Economists? What's required for membership in that

1 association?

2 A Paying a fee.

3 Q Anything else?

4 A I don't believe so, no, sir.

5 Q You identify a publication, "Preparation of a
6 Case, Inception to Trial," published in the Florida CPA
7 Today. Do you have an approximate date of when that
8 appeared?

9 A That was, I believe, something that was produced
10 in the late '90s or early 2000 period.

11 Q Have you had any notable publications since?

12 A No, sir.

13 Q Are you current on all of your continuing
14 education requirements for each of the professional
15 certifications you've identified?

16 A Yes.

17 Q Are you current all on requirements for any
18 licenses that you hold?

19 A Yes.

20 Q Tell me what licenses you hold.

21 A I'm licensed by the State of Florida as a
22 certified public accountant.

23 Q Is that the only state that you've ever been
24 licensed as a CPA in?

25 A No.

1 Q What other states have you been licensed in?

2 A Minnesota.

3 Q And how did that license terminate?

4 A When I moved to Florida.

5 Q Were there ever any disciplinary actions against
6 you in Minnesota?

7 A No.

8 Q Have you had any disciplinary actions against you
9 as a CPA in Florida?

10 A No.

11 Q Fair to say your Minnesota license, you let it
12 lapse?

13 A Yes.

14 Q In the education section of Exhibit A you
15 reference graduate studies at the University of South
16 Florida. Did those studies end with a graduate degree?

17 A No.

18 Q Approximately how many credit hours of graduate
19 studies are you referring to with respect to the USF
20 coursework?

21 A I recall that I was 15 hours shy of finishing.

22 Q And that was 15 hours shy of finishing to what
23 degree?

24 A The MBA.

25 Q Sir, would you turn to page -- to Exhibit B of

1 your report, and tell me what Exhibit B to your report
2 represents.

3 A Exhibit B is the listing of matters under Rule
4 26, the last four years or five years of testimony at
5 deposition or trial that I provided.

6 Q And is this inclusive of all of your testimony at
7 deposition or trial in the last five years or four years?

8 A I believe it is. I'm not aware of anything
9 that's missing in that time period.

10 Q Have you ever testified as expert on successor
11 liability?

12 A I believe I have, yes, sir.

13 Q Okay. Can you identify for me where in Exhibit B
14 or which case you've testified as an expert for successor
15 liability in the past?

16 A I don't know that it -- it was in the last four
17 or five years that that testimony has been provided.

18 Q Okay. Exhibit B aside, let's talk about your
19 prior experience testifying as an expert on the topic of
20 successor liability. How many occasions do you recall
21 you've provided such expert testimony or served as an
22 expert, whether providing testimony or not?

23 A Again, I'm not recalling with specificity, but
24 maybe two or three times.

25 Q Okay. When you say you're not recalling with

1 specificity, can you give me the attorney that you worked
2 with in any of those two or three instances?

3 A It may have been the Stichter Riedel firm I'm --
4 would be one.

5 Q Do you know that, or are you guessing?

6 A I'm guessing at this point. That's what I'm
7 saying; I'm not able -- I'm not recalling.

8 Q Of the two or three instances you believe you may
9 have served as an expert on successor liability, do you
10 remember the case names?

11 A No, sir.

12 Q Do you remember the jurisdictions where the cases
13 were pending?

14 A No, sir. But I imagine it would be here in the
15 Middle District.

16 Q Would you have records at your office of
17 instances where you have served as -- or provided expert
18 testimony on the topic of successor liability?

19 A I'm not sure if it goes back a number of years.
20 Those records may have -- they may no longer exist.

21 Q Can you think of any instance in the last five
22 years where you've served as an expert on successor
23 liability?

24 A I'm not recalling, as I'm sitting here with you.

25 Q If I asked you on a break to take a look at the

1 cases listed on Exhibit B, would you be able to do that and
2 tell me whether any of those were cases in which you
3 provided testimony as an expert on the topic of successor
4 liability?

5 A For what's listed here, yes.

6 Q Okay. I will ask you to do that at some point
7 when we take our next break, if you don't mind.

8 A Sure.

9 Q Are you familiar with what is generally referred
10 to as the Daubert standard for experts?

11 A Yes.

12 Q Have you ever been the subject of a Daubert
13 challenge in any court proceeding in which you were
14 identified as an expert?

15 A Not that I'm aware of, no, sir.

16 Q Generally speaking, have you ever been identified
17 as an expert in a case in which the court did not allow you
18 to provide testimony at trial?

19 A. At trial?

20 Q Yes, sir.

21 A I'm not aware of any case.

22 Q Do you recall any case where you were prepared
23 to provide expert testimony at trial, where you were
24 challenged as an expert?

25 A I think that there have been cases over the years

1 where there have been motions in limine. I'm not aware of
2 any that have been successful.

3 Q Can you recall the last instance in which a
4 motion in limine was filed challenging your testimony as an
5 expert?

6 A Last week.

7 Q Okay. And in what case?

8 A It's a state case, and the objection is -- or the
9 motion in limine was with regards to providing certain
10 information in a beer distributor case with regards to
11 damages after the trial date.

12 Q Now, for purposes of the motions in limine that
13 I'm asking you about, I want to limit it to those instances
14 where the issue, as you recall it, was your qualification
15 as an expert rather than some other technical aspect of the
16 case. Okay?

17 A Yeah. I'm sorry.

18 Q And that's fine. Do you recall any -- do you
19 recall the last instance where a motion in limine has been
20 filed challenging your credentials as an expert to provide
21 expert testimony?

22 A No, sir.

23 Q And the motion in limine that you were referring
24 to just a moment ago, that did not challenge your
25 credentials? Is that right?

1 A No, sir.

2 Q As we look at Exhibit B, there are page numbers
3 on the bottom. Would you turn to page 5 for me, please.
4 The second case there is identified as a case where you
5 were retained by the Shumaker firm in a case called
6 American Color Graphics; is that right?

7 A Yes.

8 Q Generally speaking, what was the nature of your
9 testimony or in what form were you proposed to be an expert
10 in that case?

11 A It was a damages case. There were certain issues
12 of a contract and the amount of production for certain
13 advertising, if I recall. And it was a damages case.

14 Q Okay. Would you turn the page. There is a case
15 identified for Edward Peterson of the Stichter Riedel firm,
16 Blue Stone Real Estate Construction and Development. Do
17 you see that?

18 A Yes.

19 Q Can you describe for me what aspect of expertise
20 you were asked to apply in that case?

21 A I was selected as the chief restructuring officer
22 in Blue Stone.

23 Q So this was not an expert testimony or
24 deposition, necessarily?

25 A No, sir.

1 Q Would you turn to page 8 for me, please. There's
2 a case identified for Philip Campbell at the Shumaker firm,
3 James R. Wilson, MD. Can you tell me what your role in
4 that case was?

5 A It was a damages case.

6 Q As an expert?

7 A Yes.

8 Q Would you turn the page. On page 9 there is a
9 case identified for Mindy Richter of the Shumaker firm,
10 Alps South, LLC. Can you tell me what your role was in
11 that case?

12 A As an expert.

13 Q And as an expert opining on what?

14 A Damages associated with a patent infringement.

15 Q Would you turn the page to page 10. The first
16 case is identified for Mr. Berman of the Shumaker firm, In
17 re North Bay Village. Would you tell me what your role was
18 in that case?

19 A I'm forgetting the specifics.

20 Q Do you know whether it was as an expert or
21 otherwise?

22 A Yes, sir, it was as an expert. All these relate
23 to expert testimony.

24 Q Okay.

25 A But the entity was in bankruptcy, and I'm just

1 not recalling the specifics of what the testimony related
2 to.

3 Q Okay. The next item, Philip Campbell of the
4 Shumaker firm, Alejandro Robles and Francisco Robles. What
5 was your role in that case? You've said as an expert;
6 correct?

7 A Yes, sir.

8 Q And on what topic?

9 A This was a -- it was a damages case.

10 Q Your role was to provide expert testimony on
11 damages?

12 A Yes.

13 Q Anything else in your role as an expert?

14 A On this case?

15 Q On that case.

16 A There was a subcomponent that was a forensic
17 accounting component because of certain activities that
18 related to the damages, but there is really kind of a
19 bifurcation of those issues.

20 Q Anything other than forensic accounting and
21 damages?

22 A No, sir.

23 Q There's a case identified on the bottom of page
24 10 for Jamie Austrich of the Shumaker firm, Wacker Chemical
25 Corporation. In what capacity were you an expert in that

1 case?

2 A It was contract damages.

3 Q On the top of the next page you were identified
4 as an expert for Philip Campbell of the Shumaker firm in a
5 Patel case; plaintiff is Patel. Can you tell me what
6 expert -- what your expert role was in that case?

7 A That was a damages case.

8 Q On page 15 there is a listing for Todd Timmerman
9 of the Shumaker firm, Yellow Pages Photos, Inc. Can you
10 tell me what your role as an expert was in that case?

11 A As a damages expert.

12 Q And on the bottom of that page there is another
13 case for Mr. Timmerman at the Shumaker firm, SuperMedia,
14 LLC.

15 A Yes.

16 Q What was your role as an expert in that case?

17 A On damages.

18 Q And for those items that we've identified as your
19 expertise on damages, that's primarily based on accounting?

20 A Accounting or finance, yes.

21 Q When is the last time you've testified in court
22 as an expert?

23 A I believe it was in the last couple months.

24 Q Do you recall the case?

25 A It -- I believe it was the case you identified

1 earlier on page 15, the Yellow Page Photos matter with Mr.
2 Timmerman as attorney.

3 Q Do you -- were you provided with a copy of your
4 transcript of your testimony in that case?

5 A No, sir.

6 MR. MCCOSKEY: If we can take a quick break right
7 now. We can go 10 minutes again.

8 I would ask you over this break -- I'm going
9 to ask you when we return, having reviewed
10 Exhibit B over the break, if you can identify for
11 me any case listed on Exhibit B where you were
12 retained or testified as an expert on the topic
13 of successor liability.

14 THE WITNESS: Yes, sir.

15 MR. MCCOSKEY: Okay. We will take a break now.
16 We'll maybe pick up at 11:30.

17 (Brief recess was taken.)

18 BY MR. MCCOSKEY:

19 Q Mr. Oscher, you realize you're still under oath?

20 A I do.

21 Q I asked you before the break to review your
22 Exhibit B and identify for me any cases in which you have
23 served as an expert on the topic of successor liability.
24 Did you have a chance to review Exhibit B over the break?

25 A Yes.

1 Q Can you identify for me any case in Exhibit B
2 where you've served as an expert on the topic of successor
3 liability?

4 A There was nothing in Exhibit B.

5 Q And Exhibit B, to the best of your knowledge, is
6 a summary of all of the cases for which you have served as
7 expert in the last five years.

8 A Yes -- no. In which I provided testimony in the
9 last five years.

10 Q Okay. Fair enough. Is there any case in the
11 last five years where you've served as an expert on the
12 topic of successor liability?

13 A I may. That's what I was saying. I could not
14 recall without looking at the list.

15 Q Now that you've looked at the list, you can not
16 identify for me any case in which you've served as an
17 expert on the topic of successor liability; correct?

18 A The list that you're referring to is my testimony
19 list. This is not all the cases that over the last five
20 years that we've been involved with. To the extent that
21 there may be other cases where I was asked to look at
22 successor liability as an issue, there may be other cases
23 I'm just not recalling, and I don't have that list of other
24 cases that I've been involved with.

25 Q Do you maintain a list of other cases that you've

1 been involved with as an expert but not in a testifying
2 capacity?

3 A I don't maintain it like I maintain the testimony
4 list. I'm sure there's documents in the office related to
5 my prior case involvements.

6 (Composite Exhibit No. 4 was marked for
7 Identification.)

8 BY MR. MCCOSKEY:

9 Q Sir, I'm marking as Composite Exhibit 4 a
10 three-page document. Would you take a look at that for me
11 and tell me if you recognize those documents of Composite
12 Exhibit 4?

13 A Yes.

14 Q What is Composite Exhibit 4?

15 A Those are the invoices that have been provided to
16 the Wilkes & McHugh firm.

17 Q The last -- well, the third page of Composite
18 Exhibit 4 appears to be an invoice date of June 3rd, 2014.
19 Do you see that?

20 A Yes.

21 Q Since issuing this invoice, have you issued any
22 other invoices to the Wilkes & McHugh firm for this case?

23 A No, sir.

24 Q What is your hourly rate?

25 A 395.

1 Q Have you been paid for all of your invoices that
2 are represented here on Exhibit 4?

3 A I believe we have been paid for our first
4 invoice. I think we've been paid for the second invoice.
5 I don't believe we've been paid for the third invoice.

6 Q Is the payment of any of your fees contingent
7 upon any particular result in this case?

8 A No.

9 Q Is the payment of any of your fees contingent
10 upon the substance of your testimony in any way?

11 A No.

12 Q If you would look at the first page of Exhibit 4
13 for me, please. There are particular entries, I suppose,
14 where a date is identified, hours are identified, there are
15 initials, and there's a description of the work performed.
16 Is that how you typically summarize on your invoices?

17 A Yeah. Yes.

18 Q I see the first entry is January 26, 2014. Does
19 that refresh your recollection at all as to when you first
20 were contacted in this case?

21 A Yes.

22 Q And is that -- is that the first that you recall
23 performing any services in this case, on the 26th?

24 A That would be the first time that I reviewed
25 documents, yes.

1 Q Okay.

2 A But as I said and testified earlier, the contact
3 had occurred before then.

4 Q The first two entries, January 26th and February
5 1st, are both for -- identified as for document review.
6 Can you recall which documents you reviewed at that initial
7 stage?

8 A My recollection was that first document was the
9 complaint that we discussed.

10 Q So to the best of your recollection, these two
11 entries relate to your review of that 200-plus-page
12 complaint that you referred to earlier?

13 A Yes.

14 Q And nothing else?

15 A There may have been. I don't recall what else
16 might have been there.

17 Q Who is the person identified by the initials
18 T.P.?

19 A Tara Puigdomenech, which is my assistant.

20 Q And there is an entry here on March 26th for
21 research and document review. What research was performed?

22 A As I sit here with you right now, I'm not
23 recalling specifically.

24 Q Do you know -- other than a general topic of
25 successor liability, can you pin it down any more specific

1 than that?

2 A No, sir.

3 Q If you'd turn the page, please. There are
4 entries for April 3rd and 4th for meetings with Mr. Wilkes
5 on the 3rd and others, and meeting with Mr. Ruiz-Carus and
6 others on the 4th. As to the first item, was there anyone
7 at that meeting on April 3rd other than Mr. Wilkes and Mr.
8 McHugh and yourself?

9 A I'm not recalling that there was, no, sir.

10 Q And generally speaking, what was the substance of
11 that meeting with Mr. Wilkes and Mr. McHugh -- or strike
12 that.

13 What was the purpose of the meeting?

14 A Just to go over background information.

15 Q And was all of that background information
16 necessary for you to perform your expert analysis?

17 A It was all part and parcel of the work I was
18 asked to do.

19 Q Do you recall any specifics of that meeting, what
20 information Mr. Wilkes provided you?

21 A Not specifically, no, sir.

22 Q Generally, do you recall what background
23 information you obtained during the course of this meeting
24 on April 3rd?

25 A Mr. Wilkes talked about the parties, and the

1 litigation, and the amount of time and the efforts that
2 everybody has been going to to get documents produced.
3 Again, as I said, it was just background information.

4 Q Did he tell you anything about the personalities
5 involved in the case?

6 A Not that I specifically recall, no.

7 Q Did he tell you anything of his personal opinions
8 on owners and operators of nursing homes?

9 A I don't think we had that specific discussion.

10 Q Did he communicate at all to you his
11 relationships or prior interactions with Mr. Forman or Mr.
12 Grunstein?

13 A Not that I recall, no, sir.

14 Q How about the meeting on April 4th with Mr.
15 Ruiz-Carus and others? Do you recall that meeting?

16 A Not specifically, no, sir.

17 Q Do you recall any topics that were discussed at
18 that meeting?

19 A No. Again, my meetings, I think you can
20 generally say that they were just for background
21 information as I was reviewing documents or had documents
22 available. It was as it related to the case in general.

23 Q April 23rd you have a time entry for a discussion
24 with Mr. Wilkes. Was that telephonic or face-to-face?

25 A It was probably telephonic, the way I've

1 described it.

2 Q Do you recall any particulars of that discussion
3 with Mr. Wilkes on the 23rd?

4 A No, sir.

5 Q How about on the 28th? You have a listing for a
6 discussion with Mr. Ruiz-Carus. Was that telephonic or in
7 person?

8 A Again, by the description, I would say telephone.

9 Q Do you remember any particulars of a telephonic
10 discussion you had with Mr. Ruiz-Carus in late April?

11 A No, sir.

12 Q Would you turn the page for me, please. And
13 there is a entry on April -- or excuse me -- May 13 with
14 initials L.A.U. Who is that?

15 A That is -- it's indicated at the bottom. That's
16 Lisl Unterholzner.

17 Q And what is Lisl's position at your firm?

18 A She is an accountant. She's staff and has been
19 working with me on the review of the documents.

20 Q She's a staff accountant at your firm?

21 A Yes.

22 Q Is she a CPA?

23 A She will be in a few more days. She's passed the
24 exam and has been waiting for a period of employment to
25 elapse before officially getting her certificate.

1 Q Do you know whether she holds any graduate
2 degrees?

3 A I believe she holds a couple of degrees. But the
4 accounting and her degree in accounting is the last degree
5 she has.

6 Q Do you know when that degree in accounting was
7 obtained?

8 A I want to say in the last year and a half.

9 Q To your knowledge, has she had any prior work
10 experience in between the pursuit of any of her degrees
11 prior to the accounting degree?

12 A Yeah. She had been employed for a number of
13 years. She had -- her original degree was, if I'm not
14 mistaken, in architecture.

15 Q So she has worked for you for approximately a
16 year and a half since obtaining her degree in accounting?

17 A It isn't quite a year and a half. She's coming
18 up, I believe, on one year with me now.

19 Q On April -- or excuse me -- May 20th, there is an
20 entry for a discussion with Mr. Kapila. Do you see that?

21 A Yes.

22 Q Do you recall that discussion?

23 A In a general sense, yes, I do.

24 Q Was that telephonic?

25 A Yes.

1 Q And tell me everything you can recall about that
2 discussion with Mr. Kapila on the 20th.

3 A It was with regards to the documentation that I
4 understood had come in, and his indication that he had not
5 received -- or that he had not received some information,
6 and some of what he had received he had not reviewed,
7 himself, at that point in time.

8 Q Do you recall whether he identified specifically
9 what information he had not received at that point?

10 A No, sir.

11 Q Do you recall whether he had identified
12 specifically what information he had received but not
13 reviewed as of that point?

14 A I think whatever documents had been provided to
15 him he was -- and I don't know what that is, but there had
16 just been a recent production, and he was indicating that
17 he had not -- he was now starting to look at it but had not
18 finished his review, and would not be turning it over to us
19 or to me any time soon.

20 Q Did you ask him for those materials that he had
21 just recently received?

22 A I don't know whether I asked him or asked
23 counsel, but the indication was that I would not be getting
24 them.

25 Q Did he give you a reason? Did Mr. Kapila give

1 you a reason why you would not be getting the materials
2 that he had at that point?

3 A I don't recall asking. Not that I recall.

4 Q Did you ask for those materials either directly
5 or through counsel more than once?

6 A I think I just indicated to counsel that I was
7 aware that they had been received and I didn't have time to
8 look at the information anyhow, so it actually became a
9 nonissue.

10 Q Your entry on May 20th also indicates "Draft
11 expert report." Do you see that?

12 A Yes.

13 Q That's the first reference to the report that I
14 see in your time records. Is that the first day that you
15 would have started the preparation of your report?

16 A Yes.

17 Q So you started preparing the report on the 20th
18 of May, and it was issued on the 23rd? Is that right?

19 A Yes.

20 Q Each of the entries beginning May 20th through
21 23rd that reference preparation of the expert report, is
22 that a true and accurate representation of what would have
23 been the services that would have been performed?

24 A Yes.

25 Q So your entries for preparing the expert report

1 were on May 20 and May 22nd; right?

2 A Yes.

3 Q The total combined time for those entries, seven
4 and a half hours?

5 A Yes.

6 Q And it may have been less than seven and a half
7 hours if you performed some of the other tasks that are
8 described in each of those entries. Is that right?

9 A That's correct.

10 Q So at most you spent seven and a half hours on
11 your expert report.

12 A Yes.

13 Q And your assistant, Ms. Unterholzner, spent the
14 sum total of her entries, which I have at 23.94 hours. If
15 you accept my math, is that correct based on these time
16 records?

17 A Based on the time records, yes.

18 Q What did she do with respect to preparing your
19 expert report?

20 A The work that she was doing was, we were
21 constructing the manner in which the report was going to be
22 written. We were identifying the documents and pulling
23 those documents together for purposes of reference in the
24 final report.

25 Q Did she prepare an initial draft of your report?

1 A The initial framing and draft was done by myself.
2 The subsequent after that initial draft -- and I think you
3 saw the initial entry where I had identified at the very
4 beginning on the 20th. What then subsequently happened
5 was, within the framework of what I had identified, Ms.
6 Unterholzner was putting together the information and
7 helping to draft up the report, and during that time period
8 I had my input, but it was primarily her construct of the
9 information as I had identified it for her.

10 Q Do you use Microsoft Word at your office?

11 A We do.

12 Q Was your report prepared as a Word document?

13 A Probably.

14 Q Was Ms. Unterholzner ever -- when you say she
15 assisted in the preparation of the expert report, did she
16 access and provide information within the Word document
17 that became your report?

18 A Is that any -- I indicated that she drafted the
19 report. Are you asking me a different question?

20 Q No, I'm not. I'm trying to ascertain and be
21 clear whether she provided you with information for the
22 report and in background and in support of the report, or
23 whether she participated in the drafting of the report.

24 A She participated in the drafting of it.

25 Q Okay. Are there any particular sections of the

1 report that she drafted to the exclusion of you?

2 A No.

3 Q Can you -- are there any particular sections of
4 the report that you drafted to the exclusion of her?

5 A Perhaps those two concluding paragraphs on the
6 last page.

7 Q Did you and Ms. Unterholzner in this three-day
8 window exchange drafts of this report via e-mail and e-mail
9 attachments?

10 A No.

11 Q On May 23rd, the last item for your time, the
12 last entry is, "Issue related to the expert report." Can
13 you tell me what that issue related to the expert report
14 is?

15 A I don't recall, sitting here.

16 Q Was there a problem that you recall, on the day
17 your report was due, in getting the report issued?

18 A No. No, sir, not that I recall.

19 Q Were you informed of any problem with your report
20 on the day it was due as to the substance of the report?

21 A No, sir, not at all.

22 Q You have no recollection what this issue refers
23 to.

24 A Not as I sit here with you, no.

25 Q Other than the additional documents that you

1 reference in the Conclusion section of your report, as you
2 sit here today is there anything else that you wish you had
3 reviewed or that you would have wanted to do to issue your
4 final report?

5 A The accounting information that I made reference
6 to a few times.

7 Q Other than that. Is there anything else that you
8 would like to have done differently in arriving at your
9 report on May 23rd, other than reviewing that additional
10 information that you've referred to?

11 A I'm not aware of anything, as I sit here.

12 Q How much of your income derives from expert work,
13 on a percentage basis?

14 A From testimony?

15 Q Or from either supporting -- as a supporting
16 nontestifying expert or as a testifying expert. For those
17 two combined versus the rest of the work you perform at
18 your firm, what percentage, approximately, would you
19 estimate relates to expert work?

20 A At the present time maybe 30 to 40 percent.

21 Q And of that 30 to 40 percent, what percent would
22 you break down your expert work in testifying expert work
23 versus nontestifying expert work?

24 A There is only a few cases where we're contacted
25 for potential testimony where I'm not a -- where I'm a

1 consulting expert and not a testifying expert.

2 Q That's a small portion of your expert work, is
3 the nontestifying?

4 A Pretty much, yes, sir.

5 Q In the expert work that you do, what would you
6 estimate the breakout is between plaintiff versus
7 defendant?

8 A We don't keep a percentage per se. I'll tell you
9 it's 50-50, but there may be certain months that there
10 seems to be more work in a plaintiff's case than on the
11 defense side. And then a number of cases we're involved
12 with there's a plaintiff/counterdefendant component or
13 defendant/counterplaintiff component.

14 Q Have you prepared any exhibits or other
15 demonstrative documents in the course of your services as
16 an expert in this case?

17 A No specific demonstratives, no, sir.

18 Q Other than reviewing the accounting information
19 from Mr. Kapila that you've referenced, is there any other
20 additional work you plan to do before the trial in this
21 case?

22 A That I plan, no, sir. I'm not aware of anything.

23 Q What is it that you expect to receive and review
24 from Mr. Kapila that would be relevant to the opinions
25 you're expressing in this case?

1 A I don't know what the underlying accounting
2 information is or what it might show. To the extent that
3 it has information related to successor issues or might
4 relate to transactions or relate to additional documents
5 that might need to be looked at as a result of those
6 entries, I don't know. I don't have any knowledge of
7 what's in those records.

8 Q Do you have anything in mind that you're
9 expecting to see in these additional documents, that you
10 need for your opinions?

11 A No, sir. I mean, other than from what I've heard
12 or seen or where there's been testimony that there was a
13 continuation of what we've talked about earlier, the
14 continuation of activities, I don't know what they might
15 show.

16 Q Have you been told by anyone what to expect in
17 these additional documents that you would like to review?

18 A No, sir.

19 Q Did Mr. Kapila tell you what he thought the
20 additional documents would show?

21 A No, sir.

22 Q You testified earlier this morning about some
23 meetings that you had with Mr. Wilkes, Mr. Ruiz-Carus, and
24 a woman attorney. Can you identify for me whether those
25 are the same meetings on your time records which are

1 Exhibit 4, or were you referring to something else?

2 A That's what I was referring to on my time
3 records.

4 Q On March 25th there's a reference to a meeting
5 with Mr. Wilkes, Mr. Ruiz-Carus, and Ms. Gisclar?

6 A Yes, sir.

7 Q Is that who you were referring to?

8 A It is.

9 Q Were there any other ones from the Wilkes Firm,
10 other than those identified in your records, that you met
11 with?

12 A No, sir, not that I recall.

13 MR. MCCOSKEY: Why don't we go off the record
14 just for a moment to talk about scheduling, if that's
15 all right.

16 (Recess was taken.)

17 DIRECT EXAMINATION

18 BY MR. SOLOTOROVSKY:

19 Q Good afternoon, Mr. Oscher. My name is Alec
20 Solotorovsky. I represent the GTCR defendants, THI
21 Holdings, LLC, and Edgar Jannotta.

22 Now, you testified this morning that about 30 to
23 40 percent of your work relates to expert projects and
24 litigation; is that correct?

25 A Yes.

1 Q What does the balance of your work consist of?

2 A I serve as a receiver or trustee or other
3 court-appointed positions, or there's work that's not
4 litigation.

5 Q What is the work that is not litigation?

6 A Business valuation work, primarily.

7 Q What percentage of your time is business
8 valuations?

9 A It depends. I would probably say no more than 5
10 to 10 percent.

11 Q So other than that 5 to 10 percent, all of your
12 work relates in one way or another to court proceedings?

13 A Pretty much, yes.

14 Q Take a look at page 4 of your report, if you
15 wouldn't mind. At the bottom it says, "Counsel for the
16 plaintiffs has engaged Oscher Consulting, P.A., and Steven
17 S. Oscher to review and analyze the financial records of
18 THI, THMI, and any other evidence related to the plaintiffs
19 claim of successor liability against FAS, FLTCH, and THI
20 Baltimore, and to prepare a conclusion on his findings."
21 Do you see that, sir?

22 A I do.

23 Q Is that an accurate statement of your mission in
24 this case?

25 A I believe so, yes.

1 Q You were not asked to evaluate any of the
2 plaintiffs claims against the GTCR entities; right?

3 A No.

4 Q You were not asked to evaluate any of the
5 plaintiffs claims against THI Holdings, LLC; right?

6 A Correct.

7 Q You were not asked to evaluate any of the
8 plaintiffs claims against Edgar Jannotta; correct?

9 A Correct.

10 Q And just because you said no to the first of
11 these three questions, is it correct that you were not
12 asked to evaluate any of the plaintiffs claims against the
13 GTCR entities?

14 A That is correct.

15 Q And you don't have any opinions related to the
16 conduct of the GTCR entities, THI Holdings, LLC, or Edgar
17 Jannotta; right?

18 A Correct.

19 Q You understand that there were two transactions
20 that closed on March 28th, 2006; right?

21 A Yes.

22 Q In the first of those transactions THI sold THMI
23 to the debtor, Fundamental Long Term Care Incorporated;
24 right?

25 A THI sold --

1 Q THMI --

2 A Yes.

3 Q -- to -- let me start over. In the first
4 transaction on March 28th, 2006, THI sold THMI to the
5 debtor; right?

6 A Yes.

7 MR. BERMAN: Objection to form.

8 Q In the second transaction THI Holdings sold THI
9 of Baltimore and THI Of Nevada to Fundamental Long Term
10 Care Holdings, LLC; right?

11 MR. BERMAN: Objection to form.

12 A Yes.

13 Q THI of Baltimore Management wasn't a party to
14 either of those transactions; correct?

15 A I don't believe they were a direct party, no,
16 sir, if that's your question.

17 Q They weren't listed as a buyer on either of the
18 stock purchase agreements; right?

19 A I don't believe so, no, sir.

20 Q Fundamental Administrative Services wasn't a
21 buyer in either of those contracts, was it?

22 A No, sir.

23 Q You understand that THI of Baltimore Management
24 received the operations of THMI from the debtor,
25 Fundamental Long Term Care, Incorporated; right?

1 MR. MCCOSKEY: Object to form.

2 A That's my understanding, I believe, yes.

3 Q As you understand it, THMI is sold to Fundamental
4 Long Term Care, Incorporated?

5 A Yes, sir.

6 Q And then it transfers THMI's operations to THI
7 Baltimore Management; right?

8 MR. MCCOSKEY: Object to form.

9 A Yes.

10 Q And as you understand it, in that second
11 transaction between Fundamental Long Term Care,
12 Incorporated, and THI of Baltimore Management, the debtor
13 is left with the liabilities of THMI while THI of Baltimore
14 Management gets the assets of THMI?

15 MR. MCCOSKEY: Object to form.

16 A That was my understanding, yes.

17 Q And that, in your view, was the fraud?

18 MR. RUIZ-CARUS: Form.

19 A That ultimately will be what the court will
20 decide may or may not be the fraud. What I was saying was
21 that the setup of the corporate entity that Barry Saacks
22 acquired and was the sole director for was the fraudulent
23 conduct or the transaction.

24 Q And in your view, whoever brought Mr. Saacks into
25 the transaction is the one responsible for the fraud.

1 MR. MCCOSKEY: Object to form.

2 A Again, I think ultimately the liability will be
3 determined by the court. I'm just understanding what the
4 transaction was.

5 Q I'm just trying to understand what you believe
6 the fraud was.

7 A I just told you that I believe it was the setup
8 of the corporate entity that Mr. Saacks became the sole
9 director for.

10 Q And that corporate entity was the debtor,
11 Fundamental Long Term Care, Incorporated?

12 A That was the -- yes, that's the debtor in this
13 case.

14 Q You testified that THMI had some big liabilities
15 as of 2006; is that right?

16 MR. RUIZ-CARUS: Form.

17 A That's my understanding, yes.

18 Q You testified that THMI had over a billion
19 dollars in liabilities?

20 A That's my understanding, yes.

21 Q And as you understand it, those were judgments
22 obtained by the claimants in this adversary proceeding?

23 A That's my understanding, yes.

24 Q If those judgments didn't exist as of 2006, would
25 that change your opinion about fraud?

1 MR. RUIZ-CARUS: Form.

2 A Not about the fraud, no, sir.

3 Q If it turned out that none of the claimants in
4 this case obtained a judgment against THMI until 2011 at
5 the earliest, would that affect any of your opinions in
6 this case?

7 MR. RUIZ-CARUS: Form.

8 A No.

9 Q Sir, you have a lot of experience in bankruptcy
10 matters. Is that true?

11 A Yes.

12 Q And you have been an expert and a consultant in
13 bankruptcy cases?

14 A Yes.

15 Q And you've been a trustee in bankruptcy cases?

16 A Yes.

17 Q You know that in many bankruptcy cases unsecured
18 creditors don't get any cash recovery; right?

19 A That's occurred, yes.

20 Q And you know that in many cases if an unsecured
21 creditor does get a recovery it's often just pennies on the
22 dollar; right?

23 A That's the case, yes.

24 Q Based on your experience in bankruptcy matters,
25 what would you say is the typical percentage recovery for

1 unsecured creditors?

2 MR. RUIZ-CARUS: Form.

3 A It's all over the board. It depends on the type
4 of bankruptcy; it depends on the period of time that the
5 bankruptcy is taking place, the economic condition. I
6 mean, there's so many factors. I don't know that I --
7 maybe somebody had done the study. I wouldn't be the right
8 person to answer that question. I distributed 72 percent
9 not too long ago in a bankruptcy that I was involved as a
10 trustee.

11 Q What kind of case was that?

12 A It was a fraud.

13 Q I would like you to assume a health-care company
14 that's been defaulted by its secure lenders after a
15 financial restatement, it's got major liquidity
16 constraints, and it's got very aggressive and demanding
17 secure creditors. In a situation like that what would you
18 expect unsecured creditors to get?

19 MR. RUIZ-CARUS: Objection to form.

20 MR. BERMAN: Form.

21 A I have no basis to answer your question.

22 Q You would be speculating?

23 A I would be speculating.

24 Q You understand what a liquidation analysis is;
25 right, sir?

1 A Of course.

2 Q What is it?

3 A It's an analysis with regards to the value on it
4 of the assets and liabilities on a liquidated basis of the
5 corporation.

6 Q Given financial information about a company at a
7 particular point in time, you could calculate the recovery
8 that its different creditors might get in a liquidation;
9 right?

10 MR. RUIZ-CARUS: Form.

11 A It's possible.

12 Q You were not asked to do that in this case;
13 right?

14 A Correct.

15 Q You haven't done any analysis of what, if
16 anything, THMI's unsecured creditors would have recovered
17 if THMI was filed for bankruptcy in 2006 instead of being
18 sold to the debtor; right?

19 A Correct.

20 Q You know how to calculate whether or not a
21 company is profitable; right, sir?

22 A Your question confuses me. Do I know how to
23 calculate whether a company is profitable?

24 Q Given financial information about a company at a
25 given point in time, you can determine whether its revenues

1 exceed its expenses; right?

2 A Yes.

3 Q And if its revenues exceed its expenses, you
4 would say it was profitable in that period?

5 A If that's the only criteria for profitability,
6 then the answer is yes.

7 Q You were not asked to calculate whether THMI was
8 profitable at any given point in time; right?

9 A That's correct.

10 Q And you haven't done that?

11 A That's correct.

12 Q You know how to value a business; right, sir?

13 A Yes.

14 Q You've been called upon to do that as an expert
15 in litigation before; right?

16 A Yes.

17 Q Nobody asked you to value THMI as of March 2006;
18 right?

19 A That's correct.

20 Q And you haven't done that?

21 A I have not.

22 Q You haven't calculated a value of THMI as of any
23 point in time; right?

24 A That's correct.

25 Q You know how to evaluate whether or not a company

1 is insolvent; right?

2 A I do.

3 Q You're occasionally called upon to conduct
4 solvency analysis in litigation?

5 A I am.

6 Q Nobody has asked you to analyze whether or not
7 THMI was insolvent at any given point in time; right?

8 A That's correct.

9 Q And you haven't done that?

10 A That's correct.

11 Q Nobody has asked you to evaluate whether THI was
12 insolvent at any point in time; right?

13 A That's correct.

14 Q And you haven't done that?

15 A That's correct.

16 Q Sir, you understand that THMI had employees prior
17 to being sold on March 28, 2006; right?

18 A Yes.

19 Q You understand THMI had executives prior to being
20 sold only March 28, 2006; right?

21 A Yes.

22 Q You understand that those employees and
23 executives transferred to THI of Baltimore Management after
24 the transaction closed; right?

25 MR. RUIZ-CARUS: Form.

1 A Yes.

2 Q I want you to look at page 9 of your report,
3 please. You can see there's a chart at the bottom; right?

4 A Yes.

5 Q And that chart lists six executives who were
6 previously with THMI and then went to THI of Baltimore
7 Management after the closing of the transaction; right?

8 A Yes.

9 Q All of those executives started with THI of
10 Baltimore Management on March 29, 2006; right?

11 A Yes.

12 Q That's the day after the transaction closed;
13 right?

14 A That's my understanding.

15 Q And in the next column you list a resignation
16 date for all of those executives; right?

17 A Yes.

18 Q That's the date that they resigned from THMI;
19 right?

20 A Yes.

21 Q The date for all of those executives is July 6th,
22 2006; right?

23 A Yes.

24 Q And the source of that information is
25 resignations forms that you've seen in your work on this

1 case?

2 A Yes.

3 Q I would like to show you what we will mark as
4 Exhibit 5.

5 (Exhibit No. 5 was marked for identification.)

6 BY MR. SOLOTOROVSKY:

7 Q Sir, do you recognize Exhibit 5?

8 A Yes.

9 Q This is a document that you relied on in
10 preparing your report; right?

11 A Yes.

12 Q This document is cited in your report in the
13 middle of page 8; right?

14 A Yes.

15 Q This is a memo from Bradley Bennett to all
16 employees of Fundamental; right?

17 MR. MCCOSKEY: Object to form.

18 A Yes.

19 Q It's dated March 30, 2006; right?

20 A Yes.

21 Q That's two days after the transaction we've been
22 discussing closed; right?

23 A Yes.

24 Q He's writing on Fundamental letterhead; right?

25 MR. MCCOSKEY: Object to form.

1 A Yes.

2 Q And he signs his letter as president and CEO;
3 right?

4 MR. MCCOSKEY: Object to form.

5 A Yes.

6 Q You can see in paragraph 4 he describes the sale
7 transactions that we've been discussing; right?

8 MR. MCCOSKEY: Object to form.

9 A Yes.

10 Q And then in the fourth paragraph down from the
11 top he says, "All employees of the corporation, i.e.,
12 Sparks-based personnel and the division staff of Division 1
13 and 2, will be employees by a newly formed entity, THI of
14 Baltimore Management, LLC." Do you see that?

15 MR. MCCOSKEY: Object to form.

16 A Yes.

17 Q In the next paragraph he tells all employees that
18 they're going to receive two form W-2s at the end of the
19 year; right?

20 MR. MCCOSKEY: Object to form.

21 A Yes.

22 Q One W-2 is going to reflect earnings from January
23 1, 2006, to March 28, 2006, under Trans Health Management;
24 right?

25 A That's what it says.

1 Q And the second W-2 is going to reflect wages
2 earned from March 29, 2006, to December 31, 2006, under THI
3 of Baltimore Management, LLC; right?

4 A Yes.

5 Q And based on this document, you understand that
6 THMI's employees transferred to THI of Baltimore Management
7 effective March 29th, 2006?

8 MR. RUIZ-CARUS: Form.

9 MR. MCCOSKEY: Object to form.

10 A Yes.

11 Q I'd like to show you what we'll mark as Exhibit
12 6.

13 (Exhibit No. 6 was marked for identification.)

14 BY MR. SOLOTOROVSKY:

15 Q Sir, do you recognize Exhibit 6?

16 A Yes.

17 Q This is a document that you relied on in
18 preparing your report; right?

19 A Yes.

20 Q You've actually footnoted this document at page
21 9, Note 14; right?

22 A Yes.

23 Q And this is an e-mail from Mary Anne Lubertine to
24 Ken Tabler dated October 1, 2012; right?

25 MR. MCCOSKEY: Object to form.

1 A Yes.

2 Q You understand that Ms. Lubertine is the payroll
3 supervisor at FAS?

4 A Not sure that I recall that, sitting here, but...

5 Q You have no reason to disagree with that?

6 A I have no reason to disagree, no, sir.

7 Q And you believe that she knew what she was
8 talking about in this e-mail, because you cited in your
9 report?

10 MR. MCCOSKEY: Object to form.

11 A Yes.

12 Q And she tells Mr. Tabler that "All the
13 announcements I have regarding the transition have an
14 effective date of March 29, 2006, as the first day of
15 employment under THI Baltimore Management, LLC." Do you
16 see that?

17 MR. MCCOSKEY: Object to form.

18 A Yes.

19 Q In the last line of that paragraph she refers to
20 March 29th as the transition date. Do you see that?

21 MR. MCCOSKEY: Object to form.

22 A Yes.

23 Q And you relied on this e-mail for your finding
24 that THMI's former executives began employment at THMI of
25 Baltimore on March 29, 2006; right?

1 A Yes.

2 Q Sir, take a look at page 7 of your report, if you
3 wouldn't mind. In the last sentence of the second full
4 paragraph you write, "Exhibit 21 from Mr. Tabler's
5 deposition indicates monthly salaries paid by THMI
6 Baltimore of approximately 20,000 in March 2006 compared to
7 more than 1.9 million for April 2006." Do you see that?

8 A Yes.

9 Q As you understand it, THI of Baltimore Management
10 only paid salaries of about 20,000 in March 2006; right?

11 A Yes, sir.

12 Q And the following month their salaries increased
13 to more than 1.9 million; right?

14 A Yes.

15 Q As you understand it, that increase reflects the
16 transition of employees from THMI to THI Baltimore
17 Management; right?

18 A Yes.

19 Q And you would agree that in April 2006 and every
20 month after that THMI saved at least 1.9 million in salary
21 costs?

22 A I'm not sure what their salary costs were after
23 that. I do know what the salary cost that I showed for
24 Baltimore Management was.

25 Q You would agree that if THI of Baltimore

1 Management is paying someone's salary because they've come
2 over to THI Baltimore Management, then THMI isn't paying
3 that person anymore?

4 A Right.

5 Q So if 1.9 million of employee salary costs has
6 been transitioned to THI Baltimore Management, that's 1.9
7 million in costs that THMI isn't paying anymore; right?

8 A Yes.

9 Q Sir, do you expect to do any more work on this
10 case other than reviewing the documents that have recently
11 been collected by Mr. Kapila?

12 A I think that's the same question that I was asked
13 earlier, and the answer is still no.

14 Q Let me take a minute and review my notes.

15 A Yes, sir.

16 MR. SOLOTOROVSKY: Okay. I am done, although I
17 reserve the right to conduct some further questioning
18 if I need to follow up on what other counsel ask you.

19 DIRECT EXAMINATION

20 BY MS. LICKO:

21 Q Mr. Oscher, good afternoon. My name is Carol
22 Licko. I'm an attorney for General Electric Capital Corp.
23 I would like to ask you just a couple questions.

24 Mr. Oscher, I would like you to look at your
25 report, which has been marked as Exhibit No. 2. On page 5

1 you've identified several findings in your report. Do you
2 see that?

3 A In the section under findings?

4 Q Correct.

5 A Yes.

6 Q Do you have any findings in this report as to
7 General Electric Capital Corp.?

8 A No, ma'am.

9 Q I would like you to look at the last page of your
10 report, which sets forth your conclusions on page 11. Do
11 you see that, sir?

12 A Yes, ma'am.

13 Q Do you have any conclusion as to General Electric
14 Capital Corp.?

15 A No, ma'am.

16 Q Have you been asked by anyone to render an
17 opinion with respect to General Electric Capital Corp. in
18 this case?

19 A No, ma'am.

20 Q Do you intend to render any sort of opinion with
21 respect to General Electric Capital Corp. in this case?

22 A As I sit here with you, I'm not aware that I'm
23 going be asked to, no, ma'am.

24 Q Have you reviewed the allegations made in the
25 plaintiff's complaint against General Electric Capital

1 Corp.?

2 A At one point, yes, ma'am.

3 Q Did you form any opinions as to those
4 allegations?

5 A No, ma'am.

6 Q Are you aware of the damages that are claimed by
7 the plaintiffs against the defendants in this case?

8 A No, ma'am.

9 Q Are you aware of the damages that are claimed by
10 the plaintiffs against General Electric Capital Corp. in
11 this case?

12 A No, ma'am.

13 Q Then you haven't played any role the calculation
14 of those damages, have you?

15 A No, ma'am.

16 Q You're not going to be asked to render an opinion
17 with respect to those damages either, are you?

18 A I would not expect so.

19 Q Did you have any discussions with anyone from the
20 Wilkes firm regarding General Electric Capital Corp. and
21 its role in this case?

22 A I'm sorry. Which firm?

23 Q With the Wilkes firm, Wilkes & McHugh.

24 A Oh, Wilkes. I'm sorry. And please ask the
25 question again. I'm sorry.

1 Q Did you have any dissuasions with anyone from the
2 Wilkes & McHugh firm regarding General Electric Capital
3 Corp.?

4 A I think their name was mentioned in whatever
5 background discussions I had about the case.

6 Q What do you recall about that?

7 A Just that they were lenders.

8 Q Anything else you can recall as you sit here
9 today?

10 A No, ma'am.

11 Q Did you have any discussions with anyone from
12 Steve Berman's firm or Steve Berman regarding General
13 Electric Capital Corp.?

14 A I think the same answer. In discussion the name
15 was mentioned as background.

16 Q And what do you recall about those discussions?

17 A It was background.

18 MS. LICKO: I have no other questions for you.

19 THE WITNESS: Thank you, ma'am.

20 DIRECT EXAMINATION

21 BY MR. VARNER:

22 Q Mr. Oscher, I just have a couple questions
23 for you. We know each other. For the record, I'm Joe
24 Varner. I represent Rubin Schron in this matter.

25 As I heard your testimony earlier, you testified,

1 I believe, to two opinions in this matter, one being
2 that THIB Management and FAS have successor liability
3 as the mere continuation of THMI. Is that accurate?

4 A That is accurate, yes.

5 Q And the other opinion you had is that the March
6 2006 transactions were fraudulent and it will be up to the
7 court to determine who, if anyone, should be held liable as
8 a result of those fraudulent transactions.

9 A I think that's fair, yes.

10 Q I did not see in your report or hear you testify
11 as to any opinions regarding Rubin Schron. Do you have any
12 opinion regarding Mr. Schron?

13 A No, sir.

14 MR. VARNER: Thank you. Those are all my
15 questions.

16 DIRECT EXAMINATION

17 BY MR. CARROLL:

18 Q Hello, sir. Again, Hunter Carroll on behalf of
19 the Ventas entities. My questions are going to be very
20 similar to the last two questions.

21 Have you formed any conclusions regarding any of the
22 Ventas entities?

23 A No, sir.

24 Q Were you asked to come to any opinions with
25 respect to the Ventas entities?

1 A No, sir.

2 Q In your Findings section on page 5 of your
3 report, which is Exhibit 2 to this deposition, there was no
4 reference to Ventas. Is there any findings that you're
5 relying on anywhere about Ventas?

6 A No, sir.

7 Q In any discussion that you had with the Wilkes &
8 McHugh law firm, has the name Ventas come up?

9 A Yes, sir.

10 Q In what context?

11 A The same as I previously testified with General
12 Electric. They were a lender, and it was given to me as
13 part of the background information.

14 Q Was that favorable or unfavorable as far as the
15 nature of Ventas' involvement?

16 MR. RUIZ-CARUS: Form.

17 A It was background information.

18 Q Same question with regard to the Shumaker Loop
19 firm. Any discussion with the Shumaker Loop firm in
20 regards to Ventas?

21 A It would be the same answer. Mr. Berman may have
22 mentioned it in the background information when he
23 discussed the background of the case.

24 Q Was that discussion favorable or unfavorable to
25 Ventas?

1 A I don't believe it was either way. It was just
2 background information.

3 Q Are you aware of any of the damages being claimed
4 against Ventas in this lawsuit? And when I say "this
5 lawsuit," I'm talking about all the adversaries in this
6 case.

7 A No, sir.

8 Q Are you anticipating having to make any opinions
9 about Ventas or damages about Ventas?

10 A There's been no discussion, so the answer is no.

11 MR. CARROLL: I do not have any other
12 questions.

13 (Off the record.)

14 CROSS-EXAMINATION

15 BY MR. RUIZ-CARUS:

16 Q Mr. Oscher, I just want to be clear. Nothing
17 about the examination by anyone on that side of the table
18 has caused you to change any of your opinions you expressed
19 in your report. Is that right?

20 A That's right.

21 MR. SOLOTOROVSKY: Objection to form.

22 Q And the opinions you've expressed in your report
23 under the Findings section, that's what you would
24 anticipate testifying to at trial?

25 MR. SOLOTOROVSKY: Objection to form.

1 MR. VARNER: Object to form.

2 MR. CARROLL: Objection to form.

3 BY MR. RUIZ-CARUS:

4 Q You were asked some questions on page 9 of your
5 report. If you could turn to page 9 of your report. Mr.
6 McCoskey asked you some questions about the three bullet
7 points that you see that appear there on page 9. He asked
8 you about the first ones, the office buildings. He asked
9 about the second one, the office -- offices, office
10 furniture, and substantially the same computers. And then
11 with the third bullet point he asked you about that first
12 sentence about the accounting software of PeopleSoft, but
13 you weren't asked any questions about the last sentence of
14 that bullet point. "We have examined records produced
15 noting that approximately 720 general ledger journal
16 entries for the THMI business unit were posted on or after
17 April 1st, 2006." Do you see that?

18 A Yes.

19 MR. SOLOTOROVSKY: Objection to form.

20 Isaac, will you just agree to preserve all
21 objections to leading?

22 MR. RUIZ-CARUS: Yeah, that's fine.

23 MR. SOLOTOROVSKY: Okay.

24

25 BY MR. RUIZ-CARUS:

1 Q Did you rely on that statement or the records
2 that you examined with respect to that statement in coming
3 to your opinions with respect to the continuation of the
4 business?

5 A Yes.

6 Q Can you explain to me the significance of there
7 being general ledger entries for THMI after April 1st of
8 2006?

9 A The business was sold. To the extent that they
10 were continuing entries, it just indicated that there was
11 some type of continuation of business that was being
12 conducted. So we noted the entries. We don't know the
13 background. That's part of the information that we're
14 still waiting for.

15 Q The last question I have for you is -- Exhibit 6,
16 do you have that in front of you?

17 A Yes, sir.

18 Q Do you see the date this e-mail was sent from Ms.
19 Lubertine to Ken Tabler?

20 MR. MCCOSKEY: Object to form.

21 A Yes.

22 Q What is the date that that e-mail was sent?

23 A October 1st, 2012.

24 Q So over six years after the transition in the
25 payroll system was when this e-mail was sent?

1 MR. MCCOSKEY: Object to form.

2 A Yes.

3 Q And as you understand it, this was after the
4 bankruptcy had been filed. Is that right?

5 A That's my understanding, yes.

6 MR. RUIZ-CARUS: I have no further questions.

7 MR. MCCOSKEY: Steve?

8 MR. BERMAN: I don't have any questions.

9 REDIRECT EXAMINATION

10 BY MR. MCCOSKEY:

11 Q Just few follow-ups, Mr. Oscher. Mr. Ruiz-Carus
12 just asked you about a statement on page 9 reflecting -- or
13 regarding general ledger journal entries for THMI.

14 A Yes, sir.

15 Q Have you personally reviewed those general ledger
16 journal entries?

17 A I saw the general ledger -- I mean, I saw the
18 statement, because I referenced, I believe, the document
19 that I looked at. And I saw the -- I think there's a dozen
20 pages of entries, so that's what I looked at. I don't know
21 anything behind the entries.

22 Q So, for example, if I asked you if those were
23 closing entries to close the books of THMI, would you know
24 one way or the other?

25 A No, sir.

1 Q If I asked you whether those entries had anything
2 to do with ongoing business operations of THMI, you
3 wouldn't know one way or the other, would you?

4 A That's correct.

5 Q Do you recall reviewing the document that is
6 referenced on page 9, or are -- or were you relying on
7 someone telling you that there were approximately 720
8 general ledger journal entries?

9 A I looked at the document.

10 Q And if you would just look at the report on page
11 9, I want to be clear. The document that you believe you
12 looked at is the one that's identified as Footnote 12?

13 A There was -- the answer is, I believe so. I
14 don't remember the exact citation. What I remember is the
15 11,000 ledger being the document related to THMI, but the
16 Bates number sequence is 32,400 documents, and I don't
17 think I saw that many documents -- I mean, I know I didn't
18 review that many documents, so there were a dozen, 13,
19 which is what I quantified for those, the amount. But it
20 may have been within the Bates range that's identified
21 here.

22 Q Okay. How did you come up with the number 720?

23 A That was the total number that appeared after the
24 April 1st.

25 Q Did you count them individually, or was there

1 another way you arrived at that number?

2 A I'm trying to remember whether there was a number
3 that was on there when we went through it, but it was
4 pretty -- that's what I said; I recall there were 12 or 13
5 pages, and there were 15 -- or there were 50 to a page, if
6 I'm not mistaken.

7 Q Do you know the source of the documents that are
8 identified in Footnote 12 that start "TEEDOC" and then
9 numbers?

10 A The source?

11 Q Yes, sir.

12 A Off the top of my head, I don't. It was produced
13 to us in the documents we received.

14 Q Would you look at Exhibit C to your report, which
15 is the information considered, and tell me if you see
16 reference to any documents that are similarly Bates-stamped
17 by TEEDOC.

18 A I'm not seeing it specifically laid out.

19 Q Did you receive any documents in preparation for
20 your expert testimony or your expert analysis, that came
21 from any source other than the Wilkes & McHugh firm?

22 A No.

23 Q Did you receive any documents from the Shumaker
24 firm directly?

25 A No.

1 Q Did you receive any documents from Mr. Kapila
2 directly?

3 A No.

4 Q You were asked earlier about your opinions, by a
5 couple of my colleagues here, and I want to be as clear and
6 specific as we can. I believe that in answer to one of Mr.
7 Solotorovsky's questions regarding your second opinion,
8 what we've referred to as the fraud opinion, I believe you
9 said that the setup of the corporate entity is the fraud.
10 Is that accurate to your opinion?

11 A The setup -- what I intended was that it's the
12 setup in which the fraud -- or in which Mr. Saacks became
13 involved with the entity. When it was originally
14 established by Mr. Forman and Mr. Grunstein, I don't know
15 that there was any fraud there. It was the subsequent
16 involvement with Mr. Saacks that I was making reference to.

17 Q Okay. And the reason that I'm asking is, I want
18 to be clear. I think Mr. Varner asked you a question about
19 your fraud opinion suggesting that your fraud opinion went
20 to the 2006 stock purchase or sale transactions, and I did
21 not understand from my earlier deposition in questioning of
22 you that your opinion extended quite so far. Does your
23 opinion on fraud extend beyond the Saacks discussion that's
24 on page 11 of your report?

25 MR. SOLOTOROVSKY: Objection to form.

1 A What is stated in my opinion is the extent to
2 which the fraud, from my perspective, has taken place. If
3 there is additional information that becomes available
4 through other documents, but for now all I'm aware of is
5 Mr. Saacks's involvement.

6 Q As of today you're not providing any opinion,
7 expert or otherwise, about the 2006 stock purchase or sale
8 of the stock of THMI?

9 A That's correct.

10 Q How did establishing or setting up the debtor as
11 a company change the liabilities within THMI?

12 MR. BERMAN: Objection to the form.

13 A I don't believe it changed the liabilities.

14 Q Did setting up or establishing FLTCI, the debtor
15 in this case, make the debtor liable for the debts of THMI?

16 A First, I think you have asked me a legal
17 question.

18 Q Okay.

19 A And so, to the extent that the THMI liabilities
20 by the acquisition of the stock was transferred to the
21 debtor, that would seem to be a logical assumption that
22 they were transferred.

23 Q Is it your opinion, either as an expert or is it
24 your understanding as a matter of fact leading to your
25 opinions, that THMI's liabilities were transferred to the

1 debtor?

2 MR. RUIZ-CARUS: Form.

3 A That was my understanding, yes.

4 Q And on what do you base that understanding?

5 A The allegations in the case.

6 Q Beyond allegations, is there any factual material
7 that you've reviewed to satisfy yourself that allegation is
8 true?

9 A If I did in the body of documents, I'm not
10 recalling as I sit here with you.

11 Q Is it fair to say you are accepting as a fact the
12 allegation that's been made by the plaintiff that THMI's
13 liabilities were transferred to the debtor?

14 A Yes.

15 MR. MCCOSKEY: Okay. Thank you. That's all I
16 have.

17 MR. RUIZ-CARUS: I just have a couple of
18 questions.

19 RECROSS EXAMINATION

20 BY MR. RUIZ-CARUS:

21 Q Your report, Exhibit C, could you turn to page
22 11. Do you see the entry near the bottom that says
23 "general ledger activity"?

24 A Yes.

25 Q Do you think that's the entry that you were

1 referring to in Footnote 12 when you talked about this
2 ledger file that you were looking at?

3 MR. MCCOSKEY: Object to form.

4 A It could. But Mr. McCoskey's question I was
5 answering -- he asked about Bates number, did I see any
6 Bates number on here.

7 Q Sure. But you have included in Exhibit C, to the
8 best of your ability, all the documents that you were
9 provided and that you reviewed in reaching your findings in
10 this case?

11 A Of course.

12 Q Did you review the stock purchase agreement for
13 the sale of THMI to FLTCI?

14 A I had that, yes, so I reviewed it.

15 Q And is that part of the facts that you reviewed
16 in coming to your conclusion with respect to the transfer
17 of the assets and liabilities of THMI?

18 MR. MCCOSKEY: Object to form.

19 MR. SOLOTOROVSKY: Objection to form.

20 A Yes.

21 MR. RUIZ-CARUS: Okay. I have no further
22 questions.

23 MR. MCCOSKEY: You know the drill on read or
24 waive.

25 THE WITNESS: Yes. I will read.

(Deposition concluded at 1:32 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Lindsey Ashworth, Shorthand Reporter and Notary
Public, State of Florida, certify that STEVE OSCHER,
personally appeared before me and was duly sworn.

Witness my hand and official seal this 10th day
of June, 2014.

Lindsey Ashworth, Notary Public
State of Florida, My Commission:
EE862359, Expires: Jan.02, 2017

1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA

4 COUNTY OF HILLSBOROUGH

5
6 I, LINDSEY ASHWORTH, Shorthand Reporter and
7 Notary Public, State of Florida, Certify that I was
8 authorized to and did stenographically report the
9 deposition of Steve Oscher; that a review of the
10 transcript was requested; and the foregoing transcript,
11 pages 6 through page 132, is a true and accurate record of
12 my stenographic notes.

13 I FURTHER CERTIFY that I am not a relative, employee,
14 attorney, or counsel to any of the parties, nor am I a
15 relative or employee of any of the parties' attorney or
16 counsel connected with the action, nor am I financially
17 interested in the action.

18 Dated this 18th day of June, 2014.
19
20
21

22 _____
23 Lindsey Ashworth
24
25

June 18th, 2014

Steve Oscher
C/O ISAAC RAMON RUIZ-CARUS, ESQUIRE
1 North Dale Mabry Highway
Suite 800
Tampa, Florida 33609

RE: Fundamental Long Term Care, Inc.
Estate of Juanita Amelia Jackson, et al v.
General Electric Capital Corp., et al.

Dear Sir:

This letter is to advise that the transcript of the above-referenced deposition has been completed and is available for review. Please contact our office at (813) 272-2720 to make arrangements to read and sign or sign below to waive review of this transcript.

It is suggested that the review of this transcript be completed within 30 days of your receipt of this letter, as considered reasonable under Federal Rules*; however, there is no Florida Statute to this regard.

The original of this transcript has been forwarded to the ordering party and your errata, once received, will be forwarded to all parties.

Sincerely,

LINDSEY ASHWORTH
Anthem Reporting

CC: Isaac Ramon Ruiz-carus, Esquire; Gregory Martin Mccoskey, Esquire; Alec Solotorovsky, Esquire; Carol Ann Licko, Esquire; Joseph H. Varner, III, Esquire; Hunter Wyman Carroll, Esquire; Steven Mark Berman, Esquire; Seth P. Traub, Esquire; Marjorie Salem Hensel, Esquire

WAIVER:

I, _____, hereby waive the reading & signing of my deposition transcript.

Deponent Signature

Date

*Federal Civil Procedure Rule 30(e)/Florida Civil Procedure Rule 1.310(e)